

	<h2 style="margin: 0;">Planning Committee</h2> <p style="margin: 10px 0 0 0;">10th October 2019</p>
Title	Planning Enforcement and Planning Committees Appeals Update – January to June 2019
Report of	Service Director – Planning and Building Control
Wards	All
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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 2019 and June 2019.

Officers Recommendations

1. That the Committee note the Planning Enforcement and Planning Committee Appeals Update for the period of January to June 2019

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 issued 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 the period of January to June 2019.

2. PLANNING ENFORCEMENT UPDATE

2.1 Number of service requests

- 2.1.1 In the first six months of 2019, the Council received 1012 requests to investigate an alleged breach of planning control which is an increase from 2018 (1948 in the year) and also 2017 when 1596 requests were received. 1140 cases were closed in the same period.

2.2 Formal Enforcement action

- 2.2.1 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.

- 2.2.2 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 first six months of 2019.

- 2.2.3 In the first six months of 2019, 89 Enforcement Notices (of all types but excluding Planning Contravention Notices) were authorised. As a point of comparison, 196 were authorised in 2018 and 135 in 2017. The number of notices served in 2018 was an all-time high for the Council over a calendar year.

2.3 Benchmarking

- 2.3.1 The Ministry of Housing, Communities & Local Government recently released enforcement statistics for the year ending June 2019. According to those statistics, the Council served the second most enforcement and breach of conditions notices in England in the year ending June 2019. (<https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>)

Rank	Local Planning Authority	# enforcement notices and breach of conditions notices
1	Newham	142
2	Barnet	130
3	Brent	129
4	Westminster	116
5	Bradford	101

2.4 Cases Closed and Investigation Conclusion

	Jan-Jun 2019	2018	2017
Full compliance following serving of enforcement notice	92	142	113
Informal compliance Works carried out and/or use ceased with breach resolved informally	152	305	320
Lawful development No breach of planning control was identified following investigation	450	885	955
Breach detected but harm insufficient to justify enforcement action	255	419	244
Other duplicate referrals, anonymous or withdrawn requests, dealt with through alternative legislation etc	91	134	239
Total	1040	1899	1871

2.5 Prosecutions and notable cases updates

2.5.1.1 1A Mortimer Close (Childs Hill ward)

The site is a small parcel of land on adjacent to the footpath between Mortimer Close and Garth Road. The site has an extensive planning history with permission initially being granted in 2006 for a single storey office block with ancillary accommodation in the roof space.

Various section 215 (untidy land) Notices were served as building works stalled and although minor works were undertaken to improve the condition of the building the site, in a key regeneration area, became unsightly and a focus for littering, graffiti and anti social behaviour. A further permission for alterations to the building was granted on appeal by the planning inspectorate in September 2015.

The owner failed to complete the works granted by the permission within its three years 'implementation period'.

Section 94 of the Town and Country Planning Act allows the local planning authority to serve a completion notice. The completion notice was confirmed by the Ministry for Communities, Housing and Local Government on the 24th June. This gives the owner of the land 12 months from that date to complete the build in accordance with the approved plans. Failure to do so results in the termination of the planning permission and the authority enforcing the buildings demolition.

Although relatively rare in the borough incomplete building works and derelict buildings can have a disproportionately large negative impact on an area and can serve as 'hubs' for many forms of criminal and anti social behaviour . As such we are keen to do what we can to reduce the impacts of these buildings and incomplete developments

The Council is always looking for innovative solutions to resolve breaches of planning control. A Completion Notice is an extremely uncommon notice and this is the first to be served by the London Borough of Barnet. It is unknown if any other local authority has pursued this route of action. A completion notice is unlikely to be appropriate in most circumstances but officer will happily consider any instances that are brought to their attention to see if there is a potential solution.

2.5.1.2 Site by Colney Hatch Lane, the North Circular Road and Cromwell Road (Coppetts Ward)

In late Spring the Council were alerted to an unauthorised Traveller site that had settled on the Friern Barnet Playing Fields, a private site bordered by Colney Hatch Lane, the North Circular Road And Cromwell Road in the Coppetts Ward, N10.

The land is designated Metropolitan Open Land, as designated in the London Plan, and the same level of protection is to be given as for Green Belt land. A planning enforcement notice was served on those with an interest in the land for the material change of use of the land for the stationing of caravans to form a Gypsy and Traveller site, after active engagement with the owners and occupiers had not resulted in the cease of the unauthorised use.

This was the first Enforcement Notice served by the Council on a Traveller site. Following the serving of the Enforcement Notice which gave the occupiers three months to vacate the site, a police incident occurred. This therefore led to the Council promptly issuing a Stop Notice due to the concern over the impact on the amenities and safety of the occupiers and neighbouring residents in the area. The Council served the Stop Notice escorted by the police, which gave the owners three days to act, or risk prosecution.

On receipt of the Stop Notice, the owners promptly applied for an eviction order from the Court, with success. Since the Travellers vacated, the owners took measures to secure the site to prevent further trespassing onto the site.

A Stop Notice is a rare notice and can only be served in relation to the greatest planning harm and is not without risk to the Council as compensation can be paid if the justification for such action is lacking. In the year 2018/19 a total of only 135 Stop Notices were served in the whole of England, compared to 3,867 standard Enforcement notices (Gov.uk statistics).

2.5.1.3 70 High Street Barnet EN5 5SJ (High Barnet ward)

Planning permission was granted in 2017 for the redevelopment of the old 'After Office Hours' pub site to include a new three storey building with a bar / pub on the ground floor and residential above.

A number of conditions were attached to the approval. One condition required that details of an agreed contract to construct the new building be provided prior to demolition taking place. This is exceptionally important given the location of the site within the Wood Street Conservation Area. Any break in the line of buildings would result in a highly undesirable and unsightly void being left, to the detriment of the Conservation Area.

Works to demolish the building were undertaken. However, details for when the new building was to be constructed were not submitted and it now appears that the owners are seeking approval for an alternative scheme (details here). With no development works apparently imminent there is an unacceptable risk that a gaping void will be left in the High Street for the foreseeable future and a community facility lost with little prospect for timely replacement.

Following the raising of concerns by ward councillors a planning enforcement notice was served in September 2019. Unless an approved scheme is built out beforehand the notice requires that the demolished building be rebuilt to its original size and specifications within a period of 8 months. Whilst this is done by way of an enforcement notice, it is rare that an enforcement notice is used to this effect.

The enforcement notice should ensure that the void in the streetscene is filled and the loss of the community facility is replaced without undue delay. As with all enforcement notices there is the right to make an appeal to the Planning Inspectorate.

3. COMMITTEE APPEALS UPDATE

3.1 This section summarises appeal and appeal costs decisions in Barnet (insofar as they relate to planning applications) made by the Planning Inspectorate (on behalf of the Secretary of State) since the start of 2019.

3.2 Background of planning appeals:

3.2.1 Appeals to the Secretary of State can be made following a refusal of planning permission, listed building consent, advertisement consent and other related planning

decisions. Most planning appeals are decided by independent Planning Inspectors appointed by the Secretary of State.

- 3.2.2 The Secretary of State may intervene to recover an appeal and determine it themselves, although this tends to be very rare. In these sorts of cases the Inspector's report acts as a recommendation rather than a decision. An appeal can be dismissed and permission refused for all, some or even different reasons used by the Council.
- 3.2.3 If an appeal is allowed, planning permission, or a related consent is granted. Planning Inspectors (or the Secretary of State) have the same powers as Local Planning Authorities to impose planning conditions and can also take into account proposed planning obligations contained in a Section 106 Unilateral Undertaking, or legal agreement, in coming to a decision.
- 3.2.4 There are three types of appeal procedure: written representations, hearings and public inquiries.
 - 3.2.4.1 Written representations are the most common procedure and suitable for most types of minor or small scale major development, where the planning issues are relatively straightforward and there is limited public interest. They are also usually the quickest route with the average time from start to decision currently 18 weeks (11 weeks for householder appeals).
 - 3.2.4.2 Hearings take the form of a structured discussion, led by the Inspector and are suitable for smaller scale major development where there are several planning or legal issues that need to be explored in more detail and there is wider public interest in the case.
 - 3.2.4.3 Public Inquiries are the most formal, with the parties having legal representation and cross examination of the planning and other expert witnesses taking place. Inquiries tend to be reserved for the most complex cases and where there is substantial public interest.
 - 3.2.4.4 Public Inquiries take longer with the current average time period being 51 weeks from start of the process to a decision. Inquiries are more adversarial in nature, with the appellant and the Council providing expert witnesses to give evidence for their cases. Witnesses are cross examined by barristers or other legal professionals at the inquiry. Given the way that Inquiries are run and organised they are inevitably very costly for all parties which is a material consideration in the event that an award of costs is made against a Council refusal of planning permission.
- 3.2.5 The views of third parties, such as local residents, are taken into account in all appeals. The Council will send copies of correspondence received at the application stage to the Planning Inspectorate so that the Inspector appointed by the Secretary of State is aware of the concerns raised. Residents and statutory consultees who were notified at the application stage are notified of the appeal and have the chance to make further comments. Third parties can request to take part in hearings and public inquiries. In all cases the Inspector will carry out a site visit before they make their decision.

3.3 Why appeal decisions are important

- 3.3.1 Appeal decisions are important for many reasons. There is a general presumption in the Governments adopted National Planning Policy Framework (NPPF) that planning permission should be granted for sustainable development, unless there is a clear conflict with the Development Plan or material considerations suggest otherwise.
- 3.3.2 Barnet (in common with most other Local Planning Authorities) grants more planning permissions than it refuses. The Council's planning teams work with applicants proactively by providing pre-application advice and negotiating to improve the quality of proposals, to seek to ensure that they are compliant with the development plan and represent sustainable development.
- 3.3.3 When planning permission (or other consent) is refused, the reasons for refusal need to be clear, evidence based and linked to Development Plan policies, otherwise there is a risk that the decision could be overturned on appeal. If the Council is deemed to have acted unreasonably, in terms of the reasons that it has used to refuse the application, there is also a risk of an award of costs against the Council when the matter is considered at appeal irrespective of the appeal decision itself. The appellant is entitled to claim for costs that they have incurred which they should not have had to expend, if the Inspector considers that the decision was an unreasonable one.
- 3.3.4 Appeal decisions can be helpful in testing the wording of current policies and indicate where future changes could be made to improve policies or prevent unintended consequences. This is particularly useful when preparing a new local plan or supplementary planning document.
- 3.3.5 Whilst all planning decisions should solely be made on the merits of the proposal, appeal decisions can also be helpful in understanding how to frame robust reasons for refusal taking into account the weight that Inspectors place on different planning policies and other material considerations.
- 3.3.6 When an appeal is dismissed and permission refused, it may be for all of the reasons in the Council's original decision, it may be for a selection of these or, in rare cases, for a different reason to that which the Council put forward.
- 3.3.7 Appeal decisions are part of the planning history of a site and hence are a material planning consideration when determining any subsequent applications on the same site. An appeal decision can also indicate how a development could be amended to make it acceptable. For example, an Inspector might indicate that they were concerned about particular aspects of a scheme, but acknowledged that the other parts of the proposals had merit. Local Planning Authorities must always have regard to the views of appeal Inspectors, even if they feel that the decision that they have reached is not the right one.
- 3.3.8 Planning decisions always involve a careful balancing of the issues. Understanding where Inspectors place weight on different policies, material planning considerations and their interpretation of the NPPF can help to improve local decision making.

3.4 Overview of Appeal Decisions

3.4.1 Between January and June 2019, the Council received 158 appeal decisions from the Planning Inspectorate (note that 289 were received in 2018).

3.4.2 These appeals decisions concerned cases originally refused by the Council between November 2017 to March 2019.

3.4.3 Appeals following a delegated decision:

3.4.3.1 Most appeals (129) were made against the refusal of an application authorised by officers under delegated authority. 67% of appeals made following a delegated decision were dismissed by the Planning Inspectorate (up from 63% in 2018). 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>)

3.4.4 Appeals following a committee decision:

3.4.4.1 29 of the 158 appeal decisions made by the Planning Inspectorate in that period related to a decision made by an Area Planning Committee. None followed a decision by Planning Committee. This is a significant increase in the proportion of appeals resulting from a committee decision when compared to 2018 (in 2018, 29 of 289 decisions were committee decisions).

3.4.4.2 34% of appeals made following a committee decision were dismissed by the Planning Inspectorate. This compares with 29% in 2018, 21% in 2017 and 29% in 2016.

3.4.4.3 The performance of each area committee was as follows:

- Chipping Barnet: 7 decisions of which 2 were dismissed (28%)
- Finchley and Golders Green: 18 decisions of which 7 were dismissed (38%)
- Hendon: 4 decisions of which 1 were dismissed (25%)
- Planning Committee: No appeals.

3.4.4.4 90% of these appeals related to minor residential planning applications and the rest were house extensions.

3.5 Appeal Cost Decisions

3.5.1 Either party in an appeal can apply for an award of costs and Inspectors now have the power to award costs even without receiving an application for such an award if they feel that one of the parties has acted unreasonably.

3.5.2 The Inspector will make the costs decisions separately to the planning decision. As illustrated below costs can be awarded against the Council if it has behaved unreasonably in a way that has resulted in the appellant incurring costs that could have otherwise have been avoided.

- 3.5.3 This could be as a result of including reasons for refusal that it was unreasonable to include, failure to properly defend reasons for refusal or not complying with the procedural requirements of the appeal process. Whereas the inclusion of matters relating to what might be considered to be a subjective assessment of a scheme, such as design or appearance, is less risky when it comes to the appeal considerations,
- 3.5.4 Members should note that instances where technical reasons for refusal (eg: highway impact) are added to a decision despite the Council Officer not raising objections to the proposal are most likely to result in an award of costs against the Council.
- 3.5.5 Since the start of 2019 a total of 13 appeal costs claims have been allowed against the Council by the Planning Inspectorate. Of these 9 claims have been settled.
- 3.5.6 The other 4 cases have not yet had a formal claim submitted to the Council following the appellants successful appeal, so the precise amounts involved in those particular cases are not known. There is no time limit for an appellant submitting the details of the costs claim to the Council so these could be received at any time in the future.
- 3.5.7 Of the 9 cases that have been settled in 2019, 8 followed the overturn of an Officer recommendation to approve at an Area Planning Committee, whilst one was an appeal against a Delegated decision. Of these 8 cases, the decisions were made as follows:
- 3 at Hendon Area Committee;
 - 4 at Finchley & Golders Green Area Planning Committee;
 - 1 at Chipping Barnet Area Planning Committee.
- 3.5.8 In terms of the 4 outstanding costs claims still to be settled, 2 were overturned recommendations at the Hendon Area Planning Committee, one was a Finchley & Golders Green Area Planning Committee overturn and one was a Delegated decision.
- 3.5.9 Looking at the details of the claims themselves the sums settled on in 2019 are set out below:

Hendon Area Committee

<p>Garrick Industrial Estate</p> <p>The Committee failed to take account of a previous appeal decision on the site which was dismissed, but for only one reason. When the application returned to deal with that single issue the Committee reintroduced issues previously considered acceptable by an Inspector.</p>	<p>£19,634.90</p>
<p>2 Southfields</p> <p>A partial award of costs. One reason was a subjective assessment so not unreasonable, but on the second too much weight was given to local concerns and local knowledge. Technical advice ignored. The Inspector refers to generalised suggestions.</p>	<p>£2,967.18</p>

127 The Broadway Mill Hill (former Lloyds bank)	
A partial award of costs. A character reason was not considered to be unreasonable, but one based on amenity relied on little more than an assertion that the development would cause impact. There had been no objection from Environmental Health officers.	£2,700.00

Finchley & Golders Green Area Committee

994-996 High Road	
The Inspector stated that previous history was ignored. The refusal was vague and tenuous with no robust objective analysis.	£2,230.70
18 Dingwall Gardens (two appeals on the same site)	
The Inspector stated that previous history was ignored. The Council had adopted an inconsistent approach.	£2,400.00
205 Regents Park Road (Toolstation)	
Little weight given to technical advice. Ambiguous, vague and generalised assertions made.	£6,450.00

Chipping Barnet Area Committee

Wessex Court, 51 West End Lane	
Objection was raised to the quality of external amenity space proposed despite a similar proposal being approved.	£1,934.40

Delegated decision

44 Petworth Road	
This Prior Approval Householder application was allowed on procedural grounds.	£900.00

3.5.10 It should be noted that in the list of settled cases above, the two with the highest claims (eg: Garrick Industrial Estate and 205 Regents Park Road) were both applications where technical reasons for refusal were cited by the Council in their decision to overturn the recommendation. This then, inevitably, requires appellants to provide additional technical information to rebut the refusal and, in the event an Inspector considers that the decision was an unreasonable one, the Council is then

required to pay the costs of this technical assessment which is what has happened in these two cases.

3.5.11 This is, of course, not to say that every costs claim submitted against the alleged unreasonable behaviour of the Council is successful, nor that every time the Area Planning Committee overturn a recommendation to grant consent that the Inspector will reach a similar conclusion to the appellant.

3.5.12 Since the start of 2019 a total of 19 claims for costs against the Council have been dismissed by the Planning Inspectorate, where the Inspector concluded that the Council had not acted unreasonably in its decision making. Of these 19 cases:

- 1 was an overturn at Hendon Area Committee;
- 2 were overturns at Finchley & Golders Green Area Planning Committee;
- 3 were overturns at Chipping Barnet Area Planning Committee;
- 13 were Delegated decisions.

3.5.13 These headline figures indicate that in 2019 of the 17 instances where an appellant has claimed costs against the Council following the Committee overturning of an Officer recommendation to approve permission, they have been allowed in 11 out of the 17 cases. In contrast, over the same period, a total of 15 costs claims have been made against Delegated decisions to refuse consent and the appellant has been successful only twice.

4. REASONS FOR RECOMMENDATIONS

4.1 N/A

5. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

5.1 N/A

6. POST DECISION IMPLEMENTATION

6.1 N/A

7. IMPLICATIONS OF DECISION

7.1 Corporate Priorities and Performance

7.1.1 N/A

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

7.2.1 N/A

7.3 Social Value

7.3.1 N/A

7.4 Legal and Constitutional References

7.4.1 N/A

7.5 Risk Management

7.5.1 N/A

7.6 Equalities and Diversity

7.6.1 N/A

7.7 Corporate Parenting

7.7.1 N/A

7.8 Consultation and Engagement

7.8.1 N/A

7.9 Insight

7.9.1 N/A

8. BACKGROUND PAPERS

8.1 None