

**Decision Maker:** Development Control Committee

**Date:** 28 June 2012

**Decision Type:** Non-Urgent Non-Executive Non-Key

**Title:** Proposed Review of Planning Enforcement Policy

**Contact Officer:** Tim Bloomfield, Development Control Manager  
Tel: 020 8313 4687 E-mail: tim.bloomfield@bromley.gov.uk

**Chief Officer:** Chief Planner

**Ward:** Boroughwide

---

1. Reason for report

- 1.1 The Localism Act took effect in November 2011 and introduced a number of new measures to reinforce Local Planning Authorities' enforcement powers. The changes to the Planning Act came into force on 6 April 2012. The National Planning Policy Framework published in March 2012 introduced new policy guidance which emphasises the importance of effective enforcement as a means of maintaining public confidence in the planning system.
- 1.2 This report summarises the recent changes in legislation and national policy guidance and reviews the Council's approach to planning enforcement.
- 

2. **RECOMMENDATION**

- 2.1 Members note the report and authorise the preparation and adoption of a Local Enforcement Policy in accordance with the guidance in the NPPF and incorporating the recent changes introduced by the Localism Act.

### Corporate Policy

1. Policy Status: New Policy:
  2. BBB Priority: Quality Environment :
- 

### Financial

1. Cost of proposal: Not Applicable:
  2. Ongoing costs: Recurring Cost :
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
- 

### Staff

1. Number of staff (current and additional): 4
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
  2. Call-in: Not Applicable:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

### **3. COMMENTARY**

#### **Localism Act 2011**

3.1 The Localism Act 2011 came into effect in November 2011 and introduced a number of new provisions relating to the enforcement of planning control. Part 6 of the Localism Act relates to planning and the provisions relating to enforcement are set out in Chapter 5, (Sections 123-127). A copy of the Localism Act is available for inspection but the new enforcement provisions may be summarised as follows:-

#### **3.2 Power to decline to determine retrospective applications (Section 70C )**

The practice of submitting retrospective planning applications as a means of delaying enforcement action or prosecution where there is an effective enforcement notice has long been unpopular with Members and local residents. The Localism Act now enables Local Planning Authorities (LPAs) to decline to determine a planning application if it relates to the matters specified in an enforcement notice. This section applies to an enforcement notice issued before the application was received by the LPA. The right of appeal has also been restricted and Section 174(2A) states that an appeal may not be made on ground (a) – that planning permission should be granted - if the enforcement notice was issued after the application for planning permission was made.

#### **3.3 Time limits for enforcing concealed breaches of planning control (Section 171B)**

The Act introduces additional time limits in cases involving concealment of a breach of planning control. The LPA may apply to the magistrates court for an order (known as a “Planning Enforcement Order” relating to an apparent breach of planning control. If an order is made the LPA may take enforcement action in respect of the apparent breach at any time in the “enforcement year” ie. a period of 1 year beginning 22 days after the courts’ decision.

3.4 Sections 171BB & BC set out the procedures involved in applying for a planning enforcement order, and in making the order.

#### **3.5 Offences, time limits and penalties (S126)**

The penalties for being in breach of a Breach of Condition Notice have been increased from level 3 to level 4 on the standard scale. This is in response to earlier concerns that the maximum fine of £1000 was insufficient and did not provide an effective deterrent for breaching a planning condition.

#### **3.6 Unauthorised display of advertisements (S127)**

The Act has introduced additional powers to remove structures used for the unauthorised display of advertisements. In certain cases the LPA may remove and dispose of any display structure, including an advertisement hoarding which is used for the display of adverts in contravention of the Advertisement Regulations, subject to the prior service of a “Removal Notice”. There is a right of appeal against a removal notice to the magistrates court.

3.7 Section 225C introduces new powers to remedy persistent problems with unauthorised adverts on any building, wall, fence or other structure. The LPA may serve an “Action Notice” requiring the owner or occupier of the land to carry out measures specified in the notice within a period of not less than 28 days. Section 225D provides a right of appeal against an action notice in the magistrates court.

#### 4. The National Planning Policy Framework

- 4.1 The NPPF was published in March 2012 with the stated intention of making planning policy simpler and more accessible. It took immediate effect and is a significant material consideration in making planning decisions at both national and local level. It established a presumption in favour of sustainable development to ensure that “development is not held up unless to approve it would be against our collective interest”. The NPPF also guarantees robust protection for the natural and historic environment and raises the bar on design standards.
- 4.2 A substantial number of former policy guidance documents, listed in Annex 3 of the NPPF have been withdrawn covering a wide range of planning matters, including PPG2 (Green Belts) and PPS5 (Planning for the Historic Environment). Of particular significance for planning enforcement is the withdrawal of PPG18 (Enforcing Planning Control) which was published in 1991. National policy guidance on planning enforcement has been reduced to a single paragraph (207), which is quoted in full below:

**“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and LPAs should act proportionately in responding to suspected breaches of planning control. LPAs should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”**

- 4.4 The withdrawal of PPG18 and its replacement with paragraph 207 of the NPPF provides very little guidance as to how LPAs should approach planning enforcement. However, reflecting the trend towards localism this gives LPAs greater discretion and flexibility to formulate local enforcement policies. At the heart of this new approach will be the ‘Local Enforcement Plan’ setting out the Council’s management plan for the enforcement of planning control. The format and content of the enforcement plan has not yet been defined but as well as incorporating best practice from earlier guidance it should also incorporate the legislative provisions introduced by the Localism Act, as outlined above.

#### 5. Enforcement Policy

- 5.1 In 2003 a report was submitted to DC Committee recommending a draft Enforcement Policy. A copy of the report is attached (Appendix A). The report outlined the legislative framework, the procedures for investigating alleged breaches of planning control and proposed a system of priorities for investigation within the constraints imposed by current resources. Although the general principles were accepted the policy was not formally adopted by the Council.
- 5.2 Bromley has historically experienced a high level of enforcement activity reflecting the high population, a high rate of development and extensive protected areas including green belt. The Council receives an average of 800-900 complaints per year regarding alleged breaches of planning control. In addition, it receives a substantial number of other complaints that do not involve breaches of planning control, for example boundary disputes, breaches of restrictive covenants or development which does not require planning permission. The Local Enforcement Plan (para. 4.4 above) should set out what residents should expect from the Council when an alleged breach of planning control is reported, how it will be investigated, how it will be prioritised and the likely timescale for investigation.

- 5.3 A number of LPAs have published enforcement policies which set out their general approach to dealing with breaches of planning control. However, the existing enforcement policies were prepared before the Localism Act and NPPF came into force and focus on the advice in PPG18 which has recently been withdrawn, and are likely to be updated in the context of the recent changes to the law and the new policy guidance.
- 5.4 Research indicates that 19 London Boroughs have an existing enforcement policy which is available to the public to view online. An analysis of policies adopted by other LPAs suggests that they follow a similar format, having the following elements in common:
- The need for planning enforcement.
  - The purpose of planning enforcement
  - Priorities and targets for investigation
  - Proposed course of action
  - How a typical enquiry is investigated
  - Outcome of investigation

### **Enforcement priorities**

- 5.5 LPAs should ensure that its resources are used in the most effective manner, and it is common practice to prioritise enforcement cases according to the degree of harm being caused by the breach, as follows:

**High Priority** – Unauthorised development that causes immediate irreparable harm in the locality, eg. erection of a building without permission, unauthorised works to a listed building, felling of protected trees, deposit of waste material.

**Medium Priority** - Unauthorised development that causes some harm to the locality but not to the extent that Category 1 applies. Examples might include vehicle repairs, erection of domestic extensions or outbuildings, change of use of agricultural buildings or breaches of planning control relating to hours of use.

**Low priority** – Breaches of planning control which cause little or no harm to the locality, for example, erection of fences or outbuildings marginally in excess of permitted development tolerances or minor variations to approved plans which have no material impact on the amenities of local residents.

### **Targets and timescales**

- 5.6 An equal duty exists to the complainant and the alleged offender to resolve matters fairly and consistently. Planning applications and appeals have clearly defined targets for determination, for example 8 weeks for a planning application. Defining targets for enforcement cases is less straightforward to as there are many variables which are beyond the Council's control. For the process to be transparent and fair to all the following targets may be defined'

Complainant:

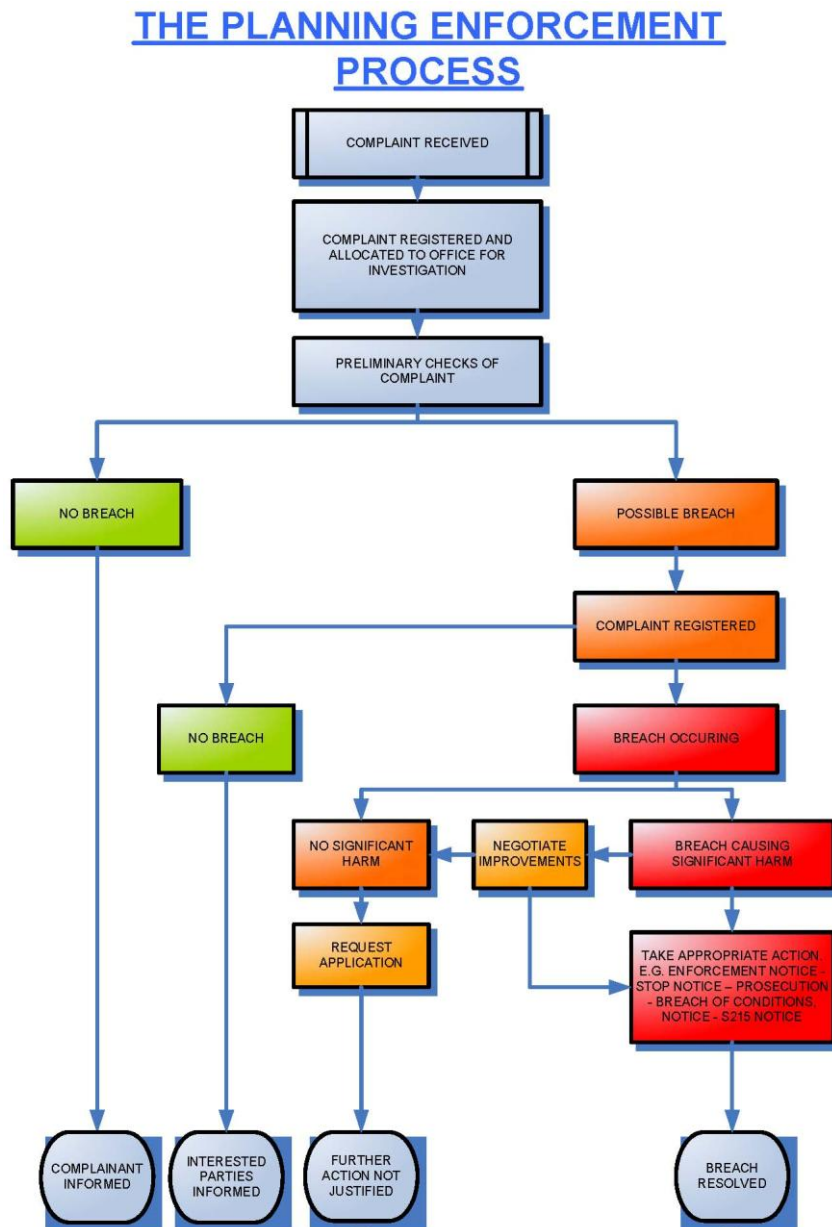
- complaint acknowledged within 5 working days
- site visit within 5 working days wherever possible
- Complainants advised of progress at significant stages throughout the process
- notify complainant when notice issued within 10 working days

- notify complainant if appeal lodged within 10 working days
- notify complainant of closed case and reasons why within 10 working days

Owner:

- Contact owner/occupier and visit site within 10 working days
- If breach identified, advise owner/occupier of the remedial steps required, timescale and consequences of taking no action within 10 working days of site visit
- If breach accords with planning policies request application for retrospective planning permission to be submitted within 14 days
- If development does not accord with policy allow a reasonable period (at least 14 days dependent on the type of breach) to rectify voluntarily
- Failing the above, seek authority to take appropriate action to rectify breach
- Send letter before action giving prior notice of taking formal action
- Notify offender of proposed course of action

5.7 The enforcement process may be represented in a simplified format using a flow chart to show the main stages in the investigation of an alleged breach as example below:



## **Outcome of investigation**

5.8 There are several possible outcomes of an enforcement investigation, which may be summarised as follows:

- Breach rectified
- Retrospective application
- No breach identified
- Breach identified but not expedient to take action
- Development immune from enforcement action
- Formal enforcement action

A range of powers are available when a negotiated resolution cannot be achieved.

- Enforcement notice
- Breach of Condition Notice
- Planning Contravention Notice
- Stop Notice
- Untidy Site Notice (S215)
- Prosecution
- Advertisement proceedings
- Injunction

The majority of decisions on enforcement matters are made under powers delegated to the Chief Planner by this Committee. However Members are entitled to call in any case for more detailed consideration by Plans Sub Committee, for example more contentious cases which are of wider public interest.

## **Conclusion**

5.9 It is therefore recommended that a Local Enforcement Plan is prepared for adoption by the Council based on the matters outlined above and incorporating the recent changes in legislation introduced by the Localism Act. The policy should also reflect the guidance contained in the recent NPPF. A copy of the Plan will be placed on the Council website for the benefit of local residents and property owners alike.

