

London Borough of Bromley

Report No.
ES03248

PART 1 - PUBLIC

Agenda
Item No.

11

Title: ENFORCEMENT POLICY

Decision Maker: Chief Planner

Decision Date: 14 Oct 2003

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

Budget/Policy Framework: Within policy and budget

Chief Officer: Chief Planner

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

Ward: Borough-wide

1. SUMMARY

- 1.1 In 1989 the Carnwath Report ("Enforcing Planning Control") was published. It made a number of recommendations to Local Planning Authorities to ensure the effective enforcement of planning control. One of the report's main recommendations was that consideration should be given to preparing a practice manual for Local Planning Authorities on all aspects of planning enforcement work.
- 1.2 The Government's response was published in July 1997 in the form of Circular 10/97 ("Enforcing Planning Control: Legislative Provisions and Procedural Requirements"). Circular 10/97 was accompanied by a detailed practice manual ("Good Practice Guide for Local Planning Authorities"). The guidance takes the form of a comprehensive manual, dealing with the whole range of enforcement procedures, including investigation of alleged breaches, deciding whether to take enforcement action, issuing enforcement notices, PCNs, BCNs, appeals prosecutions, etc.
- 1.3 Chapter 1 of the Good Practice Guide suggested that each Local Planning Authority should produce a statement of enforcement policy to provide a decision-making framework. This report outlines such a policy statement and recommends that such a policy is adopted to provide a formal framework for making decisions on enforcement matters.

2. RECOMMENDATIONS

- 2.1 **Members to note the report and consider whether they wish to adopt the policy statement.**

3. COMMENTARY

Scope and Content

3.1 The Good Practice Guide recommends that an enforcement policy should address the following issues –

- (1) the main planning policies applicable in the Council's administrative area, as set out in the adopted Unitary Development Plan;
- (2) the type and incidence of enforcement problems;
- (3) the resources (financial and staff) to be devoted to enforcing planning control, as part of the Authority's planning function or in association with their other enforcement responsibilities;
- (4) the procedure for dealing with complaints about alleged unauthorised development and other breaches of planning control;
- (5) any special planning enforcement issues the Authority may anticipate (e.g. unauthorised tipping of waste or the stationing of residential caravans on privately owned land without planning permission); and
- (6) how the Authority intends to monitor development on sites where the building control function is not being carried out by the Authority.

3.2 The enforcement policy should refer to the following matters:

1. PPG18 "Enforcing Planning Control" and other relevant guidance (eg 10/97) (national policy).
2. The Unitary Development Plan.
3. The need to protect more sensitive areas such as Green Belt, Conservation Areas, Areas of Outstanding Natural Beauty, Areas of Special Local Character, and other specially protected areas.
4. Achieving a balance between protecting amenity and other interests of acknowledged importance, and enabling an otherwise acceptable development to take place. This includes exercising reasonable control over unauthorised development and an assessment of the planning merits where no application has been received.

3.3 The relevant guidance makes it clear that enforcement action should not be taken solely because permission has not been sought or granted, or to compel the owner to apply for permission in order to obtain an application fee. It remains a fundamental principle of planning law that it is not an offence to carry out development without planning permission. It is only where the development is subject to an effective enforcement notice that an offence has been committed.

Planning Charter Standards

3.4 Planning Charter Standards were set out in 1994 by the government and National Planning Forum, recommending that Local Planning Authorities adopt a Citizens Charter Standard for planning enforcement. The Charter Standards included specific

performance indications, eg. acknowledging complaints within 3 working days of receipt, visiting the site to establish what was taking place and advising the complainant within 15 working days of what action is proposed. In most cases, these standards are currently met in Bromley wherever possible.

The Enforcement Concordat

- 3.5 In March 1998 Central Government in partnership with local authority associates and businesses prepared a document entitled "The Enforcement Concordat - Principles of Good Enforcement : Policy and Procedures". A copy is attached at Appendix 1. This was directed primarily at, for example, environmental health and related legislation and had only limited applicability to the planning process. The Concordat recommends that the voluntary sector could further assist Local Planning Authorities in their enforcement duties by alerting the Councils to breaches of planning control ensuring developers comply with planning conditions and encouraging proactive enforcement. In practice, this already occurs to a significant extent in Bromley.

Planning Users Concordat

- 3.6 In July 2000 the Local Government Association in conjunction with the business sector (developers, builders, etc) and the voluntary sector (interest groups, local organisations, amenity societies etc.) agreed a "Planning Users Concordat". This agreement sets out the rules, priorities and responsibilities of the three main parties and promotes more effective collaboration in the planning process. Councils have been encouraged to take the Concordat through the democratic process and adopt the agreement in order to develop partnerships and deliver a high quality planning service.

Best Value

- 3.7 Using Best Value Performance Indicator BVP1 112 Checklist of Planning Best Practice as a template, it sets out recommended best practice principles for each stage of the planning process:-
- development plans;
 - non statutory supplementary planning guidance;
 - planning applications lodging at pre applications discussions; agreement of a timetable; submission of the application; consultation and community involvement; decision making and agreement of planning obligations; planning appeals; and implementation, monitoring and enforcement.

TAKING ENFORCEMENT ACTION

'Expediency'

- 3.8 Parliament has expressly left it to the Local Planning Authority to decide whether enforcement action is appropriate or necessary. In deciding whether to take enforcement action, the Local Planning Authority must consider whether it is "expedient" to do so. This involves the exercise of discretion, having regard to the relevant policies in the Unitary Development Plan, the planning merits of the case and any other material considerations. If the development or use accords with Unitary Development Plan policies and does not cause demonstrable harm to any interests of acknowledged

importance (e.g. visual amenity, residential amenity or highway safety), then it may not be considered expedient to take formal enforcement action.

- 3.9 If no retrospective application is submitted, an assessment of the planning merits of the unauthorised development or activity is necessary before making a decision as to whether to take formal enforcement action. The guidance makes it clear that Local Planning Authorities should not take enforcement action solely to regularise development which is otherwise acceptable or obtain a fee for an application. No weight should be given to the fact the development has already taken place when deciding whether to take action. In balancing private and public interests, Local Planning Authorities should not be pressured into taking formal enforcement action to protect or further private interests, particularly where this would not be in the public interest.

Policy Guidance

- 3.10 The general policy and approach to enforcement is set out in PPG18 ("Enforcing Planning Control"). This advises that the determining issue in each case is whether the alleged breach of planning control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest (rather than private interest).
- 3.11 The alternatives to taking formal enforcement action are to invite a retrospective planning application or to take no further action. In the event of an application being received, it should be considered in the same way as an application for proposed development. The fact that it is retrospective should make no difference to the Local Planning Authority's consideration of the planning merits. Where appropriate, account should be taken of the views of neighbours and other interested parties (highway authority, statutory consultees, etc.).

Investigation of Complaints

- 3.12 When a complaint is received by the Local Planning Authority alleging that a breach of planning control is taking place, the various stages in the investigation process are summarised in the attached diagram (Appendix 1). This sets out the steps taken to investigate alleged breaches and the timescales involved at each stage, including keeping the relevant parties informed.
- 3.13 The investigation and resolution of alleged breaches of planning control tends to be labour intensive and can be very time consuming. The effectiveness of the enforcement service is largely dependent on available staff resources and the workload at the time. The Council currently receives around 1200 complaints about alleged breaches of planning control each year, compared with less than 900 in 1994. The complaints are currently dealt with by 3 full-time Planning Investigation Officers and a Technical Clerk under the direction of the Development Control Manager. However, one Planning Investigation Officer retired in March 2003 and has not been replaced which is affecting the level of service provided.

Priorities for Investigation

- 3.14 The expectations of the 'customer' regarding the time taken to investigate their complaint have increased in recent years, and it is not always possible to carry out the investigation

as quickly as it should be. In view of the increasing number of complaints, an informal system of priorities has been devised, as follows:

1. Top priority to complaints received from Members and to the more serious breaches of planning control, such as cases where construction work is in process requiring immediate action to stop unauthorised development.
2. Complaints about untidy sites, unauthorised changes of use, breaches of conditions, etc. where immediate action is not essential but may be required in the short to medium term.
3. 'Householder' complaints involving a wide range of alleged breaches concerning extensions, business activities, fences and walls, parking of commercial vehicles, etc.
4. Finally, currently of lowest priority are complaints relating to adverts, hoardings and flyposting, but where action may be required in the medium to long term.

3.15 The priorities set out above and the timescales set out in Appendix 1 are considered to be reasonable in the context of current resources and workload. However they may be subject to review in the event of a change in circumstances (e.g. a significant increase in the number of complaints or further staff changes).

3.16 The content of the policy statement is largely dependent on the priority given to the enforcement of planning control and the resources allocated to the function. The staff resources currently allocated to planning enforcement is a reflection of the relatively high priority given to the function in Bromley. The Council currently receives around 1200 complaints concerning alleged breaches of planning control each year, (ie approximately 400 cases per Investigation Officer per annum). The current staff levels are considered to represent the minimum necessary to provide an efficient and cost effective planning enforcement service in Bromley.

OTHER CONSIDERATIONS

"Unreasonable" Conduct

3.17 Although the decision whether to take enforcement action is at the Local Planning Authority's discretion, this is not unfettered. For example, the decision must not be "unreasonable" (in the judicial sense of "Wednesbury unreasonable"). Examples of "unreasonable" conduct are set out in Circular 8/93 ("Award of Costs"), e.g. a decision to take enforcement action based on inaccurate or incorrect information, where there are no planning grounds or where there is insufficient evidence that a breach of planning control has occurred. If an appeal to the Secretary of State is successful and the Inspector agreed that the Planning Authority has been "unreasonable", the notice may be quashed and costs awarded again the Council.

Judicial Review

3.18 More rarely, an Authority's decision to take, or not to take, enforcement action may be challenged in the High Court, by judicial proceedings. However, a decision not to take enforcement action will not normally be reviewed unless it is based on an error of law, or it is arbitrary or capricious. Failure to take action may also be the subject of a complaint of maladministration to the Local Government Ombudsman, which if proven, may result in payment of compensation to the complainant.

3.19 The Local Planning Authority should have regard to relevant judicial authority in deciding whether formal enforcement action is appropriate. Legal advice may be required before a

decision is taken, and exceptionally Counsel's opinion sought, particularly where there are conflicting legal opinions as to what action should be taken.

Injunctions

3.20 When deciding to take formal action, the Local Planning Authority must be satisfied that there is sufficient evidence to show that the alleged breach has taken place. A Local Planning Authority cannot authorise enforcement action in anticipation of a breach of planning control which has not yet occurred. However, injunction proceedings may be taken to enable an "actual or apprehended breach of planning control to be restrained". Although injunctions may be more costly, they can be much quicker and more effective in restraining serious breaches of planning control where urgent action is required.

4. POLICY IMPLICATIONS

4.1 This report is in accordance with Strategic Aim 2 of the current DCC Service Plan which states:
"To protect and enhance the quality of the built and natural environment by effective planning enforcement".

5. FINANCIAL IMPLICATIONS

5.1 None

6. LEGAL IMPLICATIONS

6.1 The Director of Legal Services will advise on any legal implications

Non-Applicable Sections:	7. PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	[Title of document and date]

APPENDIX 1 - INVESTIGATING AN ALLEGED BREACH OF PLANNING CONTROL CONTROL

- 1 **Complaint received**
- 2 **Acknowledge receipt of complaint**
3. **Investigation** – may take several weeks to establish facts & obtain evidence
(10-15 days)
 - identification of owner/occupiers (Land Registry Search)
 - site visit (may require several visits)
 - site meeting with owner/occupier/agent, if required
 - site observations, photographs
4. **Assessment**
 - a. Site meeting
 - b. Invite application (21 days), if appropriate
 - c. Cease development/activity – stop notice, if appropriate.
 - d. Letter to owner/occupier and await response (allow 21 days)
 - e. If application received – Hold enforcement action in abeyance until application determined, (2 months)
 - f. If no application and breach continues – *decide whether enforcement action expedient.*
 - g. Determine under Delegated Authority or report to Plans Sub-Committee

Recommendation
 - no further action,
 - defer for further investigation, monitoring, (eg. PCN)
 - request application
 - enforcement action – specify remedial action required
If breach rectified – no further action.
 - h. Advise complainant and owner/occupier of decision and action being taken.

5. Enforcement action authorised –

Prepare instructions for S16 Notice and enforcement notice for Council's Solicitors
Issue S16 and await response (allow 14 days)
Response to S16 received
Land Registry Search
Enforcement Notices drafted by Solicitor
Draft received and approved/amended, as appropriate
Receive engrossments
Serve Notices

If appeal lodged – await Planning Inspectorate decision

If no appeal – await effective date of notices
Monitor unauthorised development/use
Site inspection after compliance period expires
Confirm whether notices complied with
Compliance – no further action
Non-compliance – legal proceedings/prosecution commenced

Background Documents referred to during production of this report:

1. Circular 10/97 – “Enforcing Planning Control” (1997)
2. “Good Practice Guide for Local Planning Authorities” (1997)
3. “Planning – Charter Standards” – (DoE, Welsh Office and National Planning Forum, 1994)
4. PPG18 – “Enforcing Planning Control” (1991)
5. Report by Robert Carnwath QC – “Enforcing Planning Control” (1989)
6. “Planning Users Concordat” – LGA (2000)
7. “Planning on Building” leaflet – LBB (1998)

APPENDICES

1. Investigation of Alleged Breach of Planning Control – Flowchart