

Report No.
DRR/12/072

London Borough of Bromley

PART 1- PUBLIC

Decision Maker: Development Control Committee

Date: 28 June 2012

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

Title: Proposed Review of Planning Enforcement Policy

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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.
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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 :
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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:

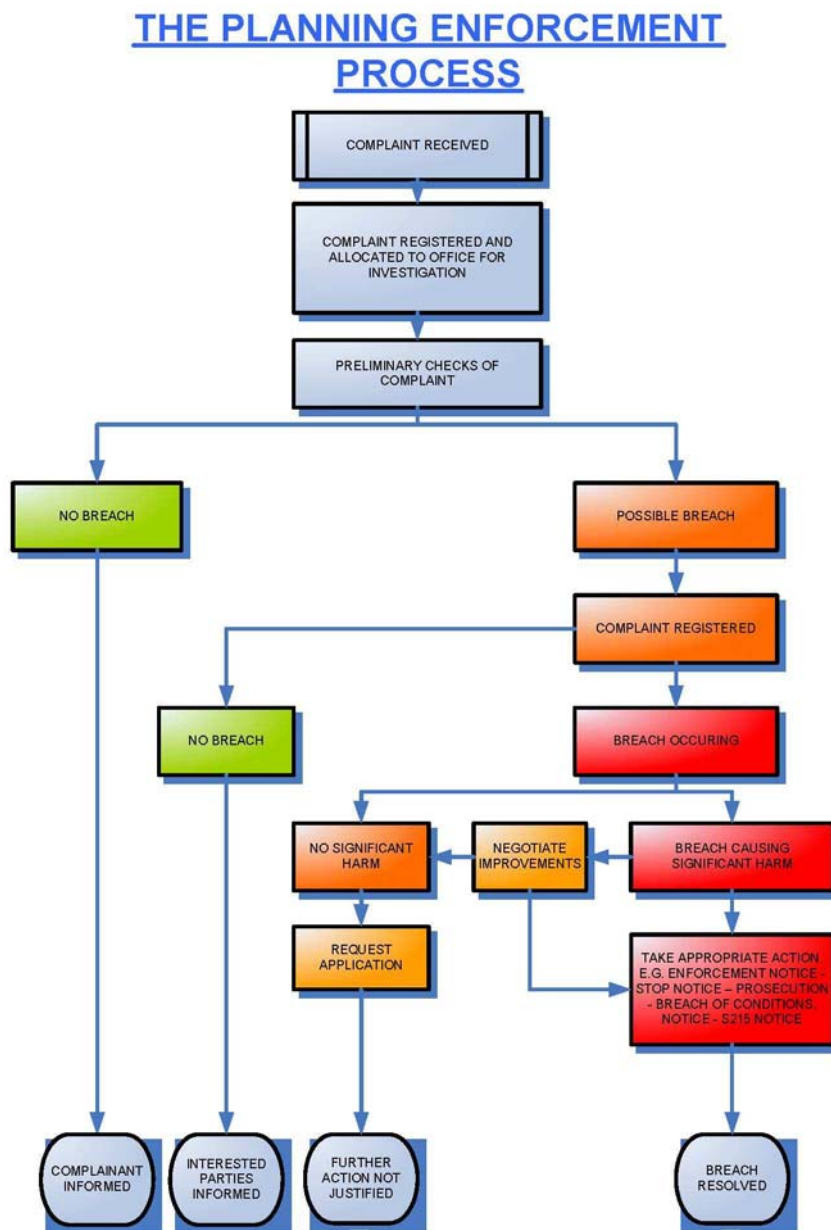
- complaint acknowledged within 5 working days
- site visit within 5 working days wherever possible
- Complainants advised of progress at significant stages throughout the process
- notify complainant when notice issued within 10 working days

- 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.

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

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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 requiredIf 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