

PLANNING ENFORCEMENT REPORT YEAR 2017/2018

Committee:	Date:
Planning and Transportation	27 August 2019
Subject: Enforcement Monitoring Report	Public
Ward: N/A	For Information
Registered No: N/A	Registered on: N/A
Conservation Area: N/A	Listed Building: N/A

Summary

Planning Enforcement addresses breaches of planning control. The Planning Enforcement Plan Supplementary Planning Document, adopted in June 2017, sets out how the City of London Corporation, ('the City'), will deal with planning enforcement. A requirement of the Plan is for the City to monitor its performance by preparing an annual report to be submitted to the Planning and Transportation Committee which will review priorities, targets and scope for charging.

Members are asked to note the following targets, the outcome of which will be reported to committee as part of the annual review in 2020.

- Ensure that the targets as set out in the Enforcement Plan SPD are met
- Reduce the number of cases older than a year by 25% at 1 April 2020
- Reduce the short term let caseload in accordance with the details set out in para. 22 below

For Information

Planning Enforcement

Aim of the Report

1. The Enforcement Plan SPD was adopted in June 2017. This report covers the year 2018 (January - December), with comparisons made to 2017. It details the type of breaches, what has been achieved in the planning enforcement service and identifies a number of priorities and targets aimed at improving the delivery of the service over the coming year. It also looks at future enforcement trends and the scope for charging.

Breach of Planning Control

2. A planning contravention can lead to enforcement action being taken if it is expedient to do so having regard to the development plan and any other material considerations. If a breach occurs it does not necessarily mean that enforcement action will be taken as enforcement action is discretionary and should be proportionate to the breach of planning control to which it relates. Action will not be taken if, for example, there is no harm or where the development is acceptable on its planning merits and the appropriate way forward is an application to regularise the situation. There are also time limits for taking enforcement action. For clarification Appendix 1 sets out what constitutes a breach of planning control.

Policy and Guidance

3. In considering enforcement action the local planning authority should have regard to the following plans and Guidance:
 - National Planning Policy Framework February 2019 (NPPF). Last updated 19 June 2019.
 - The London Plan March 2016
 - The Draft London Plan December 2017
 - The City of London Local Plan January 2015
 - The City Plan 2036 Shaping the Future City. City of London Local Plan Draft
 - The Enforcement Plan Supplementary Planning Document (SPD) Adopted June 2017
 - Government Planning Practice Guidance last updated 22 July 2019. (Enforcement and post-permission matters - updated 22 July 2019)
 - The Corporate Plan 2018-23
 - The Business Plan 2019-20
 - The Provisions of the European Convention on Human Rights Article 1 of the First Protocol, Article 8 and Article 14
4. The relevant policies and guidance are set out in Appendix 2.

The Planning Enforcement Team and Approach

5. The planning enforcement team comprises one full time and one part time planning officer (two and half days a week). Additional resource is provided by Development Management officers in relation to projects they are currently managing e.g. breaches of conditions.
6. The planning enforcement team is responsible for:
 - investigating breaches of planning control
 - responding to licence consultations on behalf of the local planning authority in its role as a 'Responsible Authority' under the Licensing Act 2003. In 2018 there were 46 licences for new applications and 18 variations issued.
 - dealing with planning issues relating to trees including applications and Notices for works to trees, general tree inquiries and updating the Tree Strategy.
7. Priority is given to breaches where harm is being caused to a resident's amenity or a listed building, or there are traffic safety issues and it would be expedient to take enforcement action, or be in the public interest to prosecute. Cases are monitored to ensure that a land use or works do not become immune from enforcement action and therefore lawful by default. In addition, Officers have been working with other departments to ensure a more joined up approach to dealing with overlapping issues which has reduced caseload. (See section 23)
8. Enforcement in the city places an emphasis on delivery/desired outcome through negotiation rather than formal actions. This accords with Government policy and has proved to be an effective means of resolving the majority of enforcement matters. Where it is not possible to negotiate a solution and there is evidence of harm formal enforcement action is taken.

Source of Complaints

9. Up to 2017 the majority of cases arose from Corporation Staff and accounted for 71% of the total complaints. These were generated via planning case work, proactive site inspections, Street Environment Officers, the Licence Liaison Partnership Group and referrals from other departments e.g. Environmental Health, Rates, Cleansing, Barbican Estates and City Surveyors. Of the remaining complaints 23% were from the general public, (although it should be noted that complaints relating to short-term lets are recorded by number of flats), and 6% via Members. In 2018 complaints via the public increased slightly with a noticeable decrease in officer complaints due to other work commitments. Members complaints remained virtually the same. Table 1 Appendix 3 details the source of enforcement complaints.

Analysis of Cases and Volume

10. 2018 saw a 41% decrease in cases received. This enabled officers to concentrate on reducing the outstanding cases and resulted in a reduction of 59 cases at 2018 year end (337 down to 278). This trend is continuing and the caseload at 1 April 2019 was down to 270 cases. The number of cases closed have remained fairly static.

11. Cases over a year old are a concern and are addressed later in the report. The principal reasons for delays are the nature of the case, which can be very resource intensive and receipt of appeals which although we receive very few can be time intensive. These are all factors beyond the Corporation's control.
12. Where offenders were advised that Enforcement Action was being considered the majority of cases were resolved by negotiation without the need for formal action. In 2018 three Enforcement Notices were served. These relate to the unauthorised use of premises as a Drinking Establishment (Class A4), the unauthorised use of a premises as a Hot Food Takeaway (Class A5) and an unauthorised shopfront. Two of these were the subject of an appeal, one of which has been determined. In the case of the A5 use the Enforcement Notice was quashed and conditional planning permission granted with a strict timetable for dealing with the provision and maintenance of an acoustic screen to reduce noise levels emitted from a flue. This achieved a desired result. The second appeal relating to the A4 use is awaiting a decision. The third Enforcement Notice has been resolved in that they complied with an extant planning permission. No planning enforcement related prosecutions were brought in 2017-2018. Table 2 Appendix 3 sets out the enforcement performance statistics for the period 2017 to 2018.
13. Table 3 Appendix 3 sets out the type of cases received in 2017 to 2018. In 2017 the emphasis was on advertisements, (including banners, flags, hoardings, flyposting and projecting signs) and changes of use linked to the food/entertainment industry (restaurants, pubs and takeaways), the night time economy and short term lets. In 2018 the emphasis was largely on changes of use including short term lets with a significant reduction in the number of complaints relating to advertisements.
14. Action taken on cases is detailed in Table 4 Appendix 3. Much has been achieved through negotiation. A large number of unauthorised advertisements have been removed as well as the removal of unauthorised works and the cessation of unauthorised uses. In addition, complaints have led to developers/occupiers submitting retrospective applications.
15. In a few cases it was found not to be expedient to enforce as there was no evidence of harm. A large number of complaints were found not to involve a breach, some were found to be permitted or deemed whilst others were out of time for taking action. These still required investigation and complainants to be informed.
16. Appendix 4 contains a few examples of where enforcement action has resulted in a visual improvement to the street scene.

Future Trends

17. On-going enforcement issues include short term lets, coffee kiosks in churchyards, food markets, advertisements, changes of use, telecommunications, works to listed buildings and breach of conditions.
18. It is likely that these issues will continue to dominate especially short term lets and their associated problems. Development activity will continue to give rise to issues associated with complying with conditions on permissions and consents and the display of banners during building works.
19. Any changes made to permitted development rights could impact on the number of enforcement cases. The City is part of a joint authority working

party, led by the Royal Borough of Kensington and Chelsea, who are lobbying the Government for a self-funding statutory register for short term lets to enforce the 90 day rule.

Service Delivery

20. Short term lets comprise a total of 101 cases, approximately 37% of the total outstanding caseload at April 2019. Appendix 5 contains a map which shows the location of short term complaints.
21. Local authorities are finding as difficult to administer short term let legislation as was indicated in our response to Government consultation. The main challenge in dealing with this type of case is monitoring the duration of the lettings to see whether the use breaches the maximum 90-night limit per calendar year after which planning permission is required.
22. In order to process this caseload it is proposed to write to the owners of the short term lets setting out the legal position and then close the case. Complainants will be advised of the action taken and asked to notify us if they believe a breach occurs. If it appears that there is a particular issue with noise and disturbance an attempt will be made to monitor the premises. It may be necessary to issue a Planning Contravention Notice to seek information as to ownership and use of the property and to invite the recipient to respond about how any suspected breach of planning control may be satisfactorily remedied. It would be pointed out that if enforcement action were taken Enforcement Notices would be served on all interested parties and that letting through a management company does not overcome this requirement. An assessment will be made as to whether it is expedient to issue an Enforcement Notice.
23. To enhance service delivery officers work closely with colleagues and other departments to help streamline processes and co-ordinate complaints. These include:
 - Cleansing and Chamberlains on short term lets re waste collection and council tax collection,
 - Street Inspectors on flyposting,
 - Environmental Health on noise and smell complaints resulting in the implementation of a joint protocol currently under review
 - Licensing on dealing with licence consultations and attendance at hearings. An informative is now attached to licences reminding people of the need to check the planning position
 - The District Surveyors on building works
 - Attendance at the Licence Liaison Partnership Group which is a cross departmental working party
24. In line with the aims and objectives of the Enforcement Plan SPD a number of measures have been carried out. These are set out below with the specific targets in the SPD identified in *italics*:
 - *Acknowledging receipt of all complaints*
 - *Meeting 'investigation start target' of 90% of all complaints within 10 working days*
 - *Implementation of an annual enforcement report to be presented to Committee*

- Operating as a single point of contact with other departments/sections within the Corporation and Members on a high-profile case to demonstrate a joined-up approach (examples include Paternoster)
- Setting up a separate enforcement web page on the City's web site
- Improved use of technology to be more responsive and coordinated
- Producing an online complaints form
- Environmental Health/Planning trainee swap
- Improved legal training
- Improved licensing consultation procedure with identification of potential enforcement cases
- Work has also started on the review of the joint protocol with Environment Health.

Service Targets

25. Subject to available resources further work could be considered in relation to checking temporary permissions/consents, (to accord with the Enforcement Plan SPD), and Building Regulation completions and to reduce the cases over a year old by 25% by 1 April 2020. More proactive work could be considered to try and seek improvements to the environment targeting for example unauthorised advertisements in conservation areas.

Scope for charging

26. There appears to be little or no scope to charge for any enforcement services. Some boroughs charge for the withdrawal of an Enforcement Notice once complied with and some charge for requests to confirm compliance with an Enforcement Notice. The City has received no such requests. The scope to charge will be kept under review.
27. The Proceeds of Crime Act 2002 (POCA) is a means of recovering profits obtained by unlawful development but this is linked to prosecutions for non-compliance with an Enforcement Notice which are limited in the City.

Conclusion

28. The enforcement backlog of casework has been substantially reduced and a large proportion of cases have been resolved securing improvements to both residential and visual amenity. Short term lets have been the focus of work and have proved difficult to administer for the reasons as previously outlined. Officers have been mindful of the need to support City businesses and with careful negotiation there has been the need only to serve 3 Enforcement Notices. Caseload continues to be a resource issue and in order to monitor the position it is proposed that the following actions are taken:

- Prioritization of cases to ensure compliance with the Enforcement Plan SPD.
- Monitoring of targets to ensure compliance with the Enforcement Plan SPD
- Monitoring of future enforcement trends to ensure that policy and the SPD continue to be applicable and relevant.

29. The following issues are considered to be the most important:

- Ensure that the targets as set out in the Enforcement Plan SPD are met
- Reduce the number of cases older than a year by 25% at 1 April 2020
- Reduce the short term let caseload in accordance with the approach set out in para. 22 above

30. In line with the requirements of the departmental Business Plan 2019-2020 the Enforcement Plan SPD will be reviewed in 2020.

APPENDIX 1

Planning Enforcement

A breach of planning control is defined as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

It can also include but not exclusively:

- any contravention of the limitations on, or conditions belonging to, permitted development rights
- unauthorised works to a listed building which affect the buildings special architectural or historic interest, or failing to comply with conditions attached to a listed building consent
- demolition of unlisted buildings in conservation areas without the required planning permission
- advertisements displayed without the benefit of express consent
- unauthorised works to trees the subject of Tree Preservation Orders, trees within a conservation area and works to trees in breach of a planning condition
- untidy land

A breach of planning control is not normally a criminal offence but it is the case for some works and non-compliance with Notices.

Link to Enforcement Plan SPD

<https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/planning-policy/Pages/Supplementary-Planning-Documents.aspx>

APPENDIX 2

Policy and Guidance

In considering enforcement action the local planning authority should have regard to the following policy documents:

National Planning Policy Framework (NPPF)

This states that:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities 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.'

The government confirmed its position on planning enforcement in the National Planning Guidance on enforcement published March 2014 (last updated 22 July 2019).

The London Plan

This contains limited reference to Enforcement as does the draft plan

Local Plan

The Local Plan, adopted 2015, establishes a presumption in favour of sustainable development. The relevant Core Strategy Policy in the Local Plan advocates that when considering development proposals the City Corporation will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework and will work proactively with applicants to jointly find solutions. This approach is reflected in the Draft Local Plan where reference is made to the Enforcement Plan SPD and that where possible the City will seek resolution without recourse to formal enforcement action.

Enforcement Plan SPD

The City's Enforcement Plan SPD (adopted 13 June 2017) sets out how the City Corporation investigates alleged cases of unauthorised development and the appropriate action to be taken. This document identifies priorities and includes targets to be met if there is a breach of planning control and or if a person reports a suspected breach of planning control. The SPD identifies issues for monitoring and advocates pro-active enforcement projects and championing good working relationships.

The Corporate Plan

The Corporate Plan aims to support the economy, shape the environment and contribute to a flourishing society. The Enforcement Plan helps to deliver these aims.

The Department of the Built Environment Business Plan

This seeks to create and facilitate the City as a leading future world class city. Enforcement plays a key role in helping to achieve this goal and it should be noted that the departmental Business Plan sets out a requirement for the Enforcement Plan SPD to be reviewed in 2020.

APPENDIX 3

Table 1 Source of Complaints

Source of Complaints	2017 (For Comparison)	2018
Public	37 (23%)	48 (50%)
Corporation Staff	114 (71%)	41 (43%)
Members	9 (6%)	7 (7%)
Total	160	96

NB: A couple of cases reported by the public have generated a lot of additional complaints. In these cases the additional complaints are not included in the figures

Table 2 Enforcement Performance Stats

Stats	2017	2018	increase/Decrease 2017-2018
Cases received	158	93	-65 cases (-41%)
Cases closed	156	152	-4
Cases outstanding year end	337	278	-59 cases (-18%)
Cases over 1 year at year end	227	229	+2
Enforcement Notices served	0	3	+3
Appeals relating to Enforcement Notices	0	2	+2
Discontinuance Notices Served	0	0	0
Number of Prosecutions	0	0	0

Table 3 Type of Cases Received

Breach Type	2017	2018
Advertisements (Excludes adverts on listed buildings)	42	8
Fly posting	5	0
Development and or demolition without planning permission	19	8
Breach of planning permission or conditions	16	16
Changes of use (Includes the night time economy)	36	21
Changes of use short term lets (Each individual flat)	17	25
Works and/or demolition without listed building consent (Includes advertisements on a listed building)	23	12
Breach of listed building consent/conditions	0	1
Development without prior approval	0	1
Works to trees in a conservation area without consent	0	1
Total	158	93

Table 4 Reason Cases Closed

Outcome	2017	2018
Advertisement consent granted	2	3
Advertisement deemed to have consent	6	11
Advertisement consent not required	0	3
Listed building consent granted	10	2
Listed building consent not required	1	4
Planning condition(s) complied with	3	3
Planning application approved	6	14
Permitted development	5	2
No breach	39	38
Not expedient to enforce	15	9
Immune from enforcement (Time limits)	3	10
Advertisement removed	43	21
Unauthorised development removed	10	1
Unauthorised use ceased	3	9
Closed Other Reasons	10	22
Total	156	152

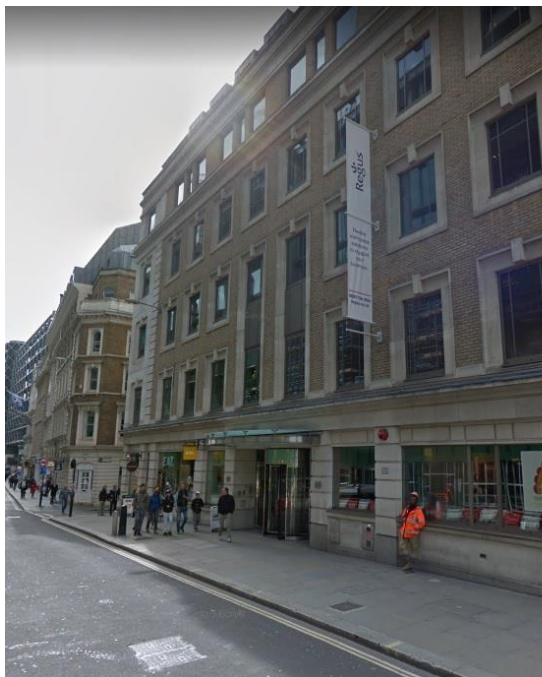
N.B. Figures in tables are approximate

APPENDIX 4

Enforcement Action Quality Audit 2017-2018

CASE No.	15/00087/ADVT
ADDRESS	60 Cannon Street, London EC4N 6NP
CONSERVATION AREA	Queen Street
LISTED BUILDING	No

PHOTOGRAPHS



Before



After

BREACH

Unauthorised advertisement (Banner)

ACTION TAKEN

- Following negotiations advertisement removed

Enforcement Action Quality Audit 2017-2018

CASE No.	15/00132/BPP
ADDRESS	191-192 Fleet Street London EC4A 2NJ
CONSERVATION AREA	Fleet Street
LISTED BUILDING	No

PHOTOGRAPHS



Before



After

BREACH

Without planning permission, the installation of a shopfront at ground floor level

ACTION TAKEN

- 26/07/16 planning permission refused for the retention of a shopfront
- 12/12/18 service of an Enforcement Notice in accordance with the resolution of the planning and Transportation Committee on 26/07/16
- 2019 works commenced in accordance with an extant planning permission as opposed to the requirements of the Enforcement Notice
- Works now complete

Enforcement Action Quality Audit 2017-2018

CASE No.	16/00004/LBWC
ADDRESS	68 Queen Victoria Street London EC4N 4SJ
CONSERVATION AREA	Bow Lane
LISTED BUILDING	Grade II

PHOTOGRAPHS



Before



After

BREACH

Unauthorised works to a listed building (installation of fascia panel over old signage plus new signage, external and internal) and breach of the advertising regulations (external and internal signage)

ACTION TAKEN

- Following negotiations fascia panel removed and historic signage revealed
- No further action required both in terms of the listed building and advertisement regulations

Enforcement Action Quality Audit 2017-2018

CASE No.	16/00175/ADVT
ADDRESS	27 Old Jewry London EC2R 8DQ
CONSERVATION AREA	Guildhall
LISTED BUILDING	No

PHOTOGRAPHS



Before



After

BREACH

Unauthorised advertisements (fascia, projecting signs and flags) and works without the benefit of planning permission (bench)

ACTION TAKEN

- 26/01/17 advertisement consent granted for fascia and two projecting signs
- 26/01/17 planning permission granted for tables plus seating incorporated within the window ledge.
- 29/09/17 appeal against refusal of express consent for the display of two flags dismissed
- Flags removed and confirmed via site visit 13/12/17

Enforcement Action Quality Audit 2017-2018

CASE No.	17/00049/UWDP
ADDRESS	5 Foster Lane London EC2V 6HH
CONSERVATION AREA	Foster Lane
LISTED BUILDING	No

PHOTOGRAPHS



Before



After

BREACH

Works without the benefit of planning permission (Flue)

ACTION TAKEN

- Following negotiations cowl removed and replaced with a flat louvre to match previous flue
- Removal confirmed via a site inspection 20/7/17

Enforcement Action Quality Audit 2017-2018

CASE No.	15/00134/DWPP
ADDRESS	Priory Court 29 Cloth Fair London EC1A 7JQ
CONSERVATION AREA	Smithfield
LISTED BUILDING	No

PHOTOGRAPHS



Before



After

BREACH

Unauthorised installation of aerials without the benefit of planning permission

ACTION TAKEN

- Following negotiations and the lack of a need for the aerials the

	<p>unauthorised development was removed</p> <ul style="list-style-type: none">• May 2017 site inspected confirmed aerals had been removed
--	---

APPENDIX 5

Map showing location of short term lets complaints

