

**REPORT FOR: PLANNING COMMITTEE.**

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**Date of Meeting:** 11 March 2015

**Subject:** **INFORMATION REPORT –**

**Responsible Officer:** Beverley Kuchar – Head of  
Development management and  
Building Control

**Exempt:** No

**Enclosures:** Enforcement Register Quarters 1- 3  
2014/2015

**Section 1 – Summary**

This report provides the Committee with an overview of Planning appeal decisions and an overview of enforcement statistics for Quarters 1-3 of 2014/15.

**FOR INFORMATION**

## Section 2 – Report

### 2.1 Appeals Background

This report provides the Committee with an overview on the appeal decisions received by the Council in Quarter 1,2 and 3 of 2014/2015.

### 2.2 Overview

The decisions of the Council as Local Planning Authority are subject to a right of appeal. Appeals are made to the Planning Inspectorate, an agency of Government, established independently by the Secretary of State to review and in most cases, determine, planning appeals submitted. Planning Appeals may be determined by 'written representations' – where the appeal is 'heard' by an exchange of written correspondence; an 'informal hearing' – where the parties meet to explore the reasons for refusal with a Planning Inspector or by way of a public inquiry, where formalised examination of the evidence takes place under the Direction of an Inspector.

The majority of planning appeals are heard by way of written representations. Public Inquiries, because of their cost and the delay associated with them, are the least common form of appeal in the borough.

In addition to the consideration of the planning merits of a specific application – centred upon the reasons for refusal, in some cases, Planning Inspectors will determine claims against the Council for applicants (or the Councils) costs arising as a result of unreasonable behaviour.

### 2.3 Appeal Decisions by Type

**Table 1: Appeal Decisions by Type – 1 April 2014 – 30<sup>th</sup> June 2014**

<b>Summary of Appeal Decisions (April – June 2014)</b>
<b>Householder Appeals</b> 6 Decided 2 Allowed <b>% Allowed = 34%</b>
<b>Enforcement</b> 1 Decided 1 Allowed (partially allowed) <b>% Allowed = 100% (partially allowed)</b>
<b>Others (Written representations, informal hearings, public inquiries)</b> 16 Decided 6 Allowed <b>% Allowed = 26%</b>
<b>Majors</b> 0 Decided 0 Allowed <b>% Allowed = 0%</b>

<b>Summary of Appeal Decisions (1<sup>st</sup> July 2014 – 30<sup>th</sup> Sept 2014)</b>
<b>Householder Appeals</b> 4 Decided 2 Allowed <b>% Allowed = 50%</b>
<b>Enforcement</b> 3 Decided 1 Allowed <b>% Allowed = 35%</b>
<b>Others (Written representations, informal hearings, public inquiries)</b> 16 Decided 4 Allowed <b>% Allowed = 25%</b>
<b>Majors</b> 0 Decided 0 Allowed <b>% Allowed = 0%</b>
<b>Summary of Appeal Decisions (1<sup>st</sup> Oct 2014 – 31<sup>st</sup> Dec 2014)</b>
<b>Householder Appeals</b> 19 Decided 7 Allowed <b>% Allowed = 37%</b>
<b>Enforcement</b> 1 Decided 0 Allowed <b>% Allowed = 0%</b>
<b>Others (Written representations, informal hearings, public inquiries)</b> 14 Decided 4 Allowed <b>% Allowed = 28%</b>
<b>Majors</b> 0 Decided 0 Allowed <b>% Allowed = 0%</b>

The above table summarises the results of appeal decisions by type over the past three quarters. Performance over the past three quarters has remained consistent with other appeals and Major appeals. In respect of householder appeals there was a peak in Q2 with 50% of applications being allowed on appeal, performance has now improved and returned to a similar percentage to Q1. In respect of enforcement appeals this has steadily improved over the year. Indeed the appeal allowed in Q1 was allowed as the Inspector considered that planning permission

should have been granted for the householder extensions and indicated that it is important that the Residential Design Guide is not applied so rigidly. The development management team has taken this decision into consideration hence this is reflected in the improvement in performance.

The performance in others including hearings and written representations has remained consistent over the past 3 quarters with 1 in 4 applications being allowed on appeal (this reflects the Governments targets for appeals). There have been no major schemes appealed within the last three quarters which indicates that the current system for providing pre-application advice and planning performance agreements is currently still effective.

The Council has had costs awarded against it twice in the last three quarters for the following cases;

### **Letchford Arms Public House**

The planning application was originally presented to the Planning Committee on the 12<sup>th</sup> Feb 2014 where additional information was requested from the applicant. This information was provided at the meeting of the 12<sup>th</sup> March 2014, the Planning Committee refused the application for the following reason; 'There is insufficient evidence of suitable marketing of the Public House at a realistic rate for a sufficient period of time, contrary to Policy DM47 of the Development Management Policies Local Plan 2013'. The Planning Inspector awarded costs against the Council as she considered that 'the reason for refusal does not stand up to scrutiny and no evidence was produced to substantiate it on appeal'. The Inspector further went on to comment that 'Furthermore, in deferring the decision in February 2014 the Council requested additional evidence from the applicant regarding marketing details which was submitted. This information does appear to have been considered by the Council but if the Committee was unhappy with the content of the evidence it could have sought appropriate advice from a professional dealing with the marketing of such premises, to substantiate or not its concerns. However, it failed to do so and instead relied on unsubstantiated information and assertions which were not supported by evidence'. It is not unreasonable for the Planning Committee to come to a different decision to Planning Officers it is, however, essential in order to avoid an award of costs for unreasonable behaviour that the reason for refusal can be substantiated. In this case there was no evidence submitted by the Council to contradict that submitted by the Applicant and as such the Inspector considered that the reason for refusal was not adequately substantiated and as such the Council had acted unreasonably in refusing the planning application.

### **The Hive Football Centre**

The planning application was refused for the following reasons;

1. The application has failed to demonstrate that the impact of the floodlights would not result in significant harm to the amenities of neighbours by virtue of unacceptable lighting levels within and adjacent to residential properties surrounding or near to the site. The proposals are therefore contrary to policies DM 1C and DM 48C of the Development Management Policies Local Plan (2013).

2. The height of the west stand would result in a loss of amenity to neighbouring properties, contrary to Policy DM1 of the Harrow Development Management (2013), Policy CS1-B of the Harrow Core Strategy (2012), and Policy 7.4 of the

London Plan (2011).

3. The west stand by reason of excessive height, scale, bulk and proximity to the site boundary, would cause unacceptable harm to the amenity of neighbouring properties, contrary to policy DM1 of the Harrow Development Management Policies Local Plan (2013) Policy CS1.B of the Harrow Core Strategy (2012) and Policy 7.4 Of the London Plan (2011).

On the basis of this decision an enforcement notice was served requiring the reduction in the height of the west stand and removal of the floodlights. The applicant appealed the planning decision and the enforcement notice. The Council obtained advice from two independent planning consultants who were both unwilling to defend the reason for refusal regarding the West Stand. The Independent planning consultants did not consider that the stand would harm the amenities of the neighbouring occupiers. On the basis of this advice the Council withdrew the enforcement notice and resolved not to defend the appeal against the refusal of planning permission for the variation of condition 29. A partial award of costs has been awarded against the Council on the basis of the fact that the reasons for refusal regarding the west stand cannot be substantiated and do not stand up to scrutiny. The Inspector did not award costs due to procedural issues (withdrawing the enforcement notice and resolving not to defend the appeal against the refusal of planning permission for the variation of condition 29) and did not consider that it was unreasonable for the Council to refuse the application on the lack of information concerning lighting. The costs award related only to the refusal reasons regarding the west stand, as the Inspector considered these reasons could not be substantiated with evidence.

#### 2.4 Conclusion (Appeals)

Planning Appeals introduce considerable additional costs to the planning application process for both applicants and the Council. They also prolong the uncertainty surrounding new development for surrounding residents and businesses. The outcome of planning appeals can be uncertain for both applicants and the Council. Wherever possible, the Planning Division is seeking to avoid unnecessary appeals by providing better, earlier and more consistent guidance and by ensuring that planning applications submitted respond to clear policy guidance setting out the expectations of the Council for quality, sustainability and amenity. When an application is refused, work within the team is increasingly focused upon ensuring that sound and clear reasons for refusal are provided, to enable an applicant to understand what needs to be changed (if possible) to make a proposal acceptable, and to allow the most robust defence of such reasons in the event of an appeal.

#### 2.5 Planning Enforcement

Below is a summary of enforcement statistics for the period April 2014 – December 2014. A copy of the enforcement register for this period is appended to this report for information.

Planning enforcement continues to receive a significant number of complaints regarding alleged breaches of planning control, as a result, it was decided to invest more into the team given the number of outstanding cases that remained uninvestigated and as a result, a recruitment drive secured the services of two (2) additional officers who joined the team in November 2013. The two new officers have been tasked with reducing the backlog of outstanding cases and initiating the appropriate action required to resolve the breaches of planning control.

The impact of the two additional officers has been greatly noticed as there has been a notable increase in the number of formal notices issued and served (in excess of 200% when compared to the previous year). There has also been a notable increase in the number of site visit undertaken and cases closed which has been as a direct result of the additional resources. The team has investigated and closed in excess of 190 case over the period by way of negotiating compliance with the Council/ National policies, one of the most notable cases was resolving the multiple breach of planning that was occurring at The Haulage Yard, Unit 4 25 Cecil Road, which was being used as an unauthorised highway contractors yard and an unauthorised Waste Transfer Station.

Unfortunately we lost one of our officers and the team had to operate with 3 officers for a short period. A replacement officer has since joined the team in October 2014 brining the compliment of officer back to (4) four. While it is agreed that the addition of the 2 officer has had a direct impact on the output of the team, it is clear that the challenges associated with substantial reduction in the number of outstanding cases remain. The resources allocated to planning enforcement should therefore continue to be monitored.

### **Action post Enforcement Notice**

The Planning Enforcement Team continues to encourage offender to comply with the requirements of enforcement notices, however in circumstances when this has not been adhered to and the department considers in expedient and within our limited financial budget, the department can either under section 178 of the Town and Country Planning Act, obtain the services of contractors, to enter the property and undertake the works required to secure compliance with the notice(Direct Action) or initiate prosecution proceeding through the Magistrates Court for failure to secure compliance with the notice. During this period we executed five (5) orders for Direct Action involving removal of unauthorized works in a conservation area, removal of a satellite dish installed on a listed Building; cessation of the unauthorised Bed in shed and removal of the kitchen and bathroom within; and the removal of unauthorised extensions.

### **Table 2: Enforcement Statistics by Quarter 2012/13**

Summary of Enforcement Statistics for 2013/2014 (Jul 13 to Sep 13)

Months/Year	Total New Cases Created	Total ENF Notices served	Appeals Lodged	Outstanding Appeals Allowed	Outstanding Appeals Dismissed	Prosecution
Apr – Dec 2013	428	13	7	4	6	1 pending
Apr – Dec 2014	547	42	15	1	3	1 pending
	+27%	+223%	+114%	75% reduction	50% reduction	

### Section 3 – Further Information

This report, insofar as it reports on enforcement action, will be updated on a quarterly basis, in accordance with Proviso F of the Planning and Building Control Scheme of Delegation, March 2013, which requires that any decision on taking enforcement action be reported to the planning committee.

## Section 4 – Financial Implications

This report, for information, has no direct financial implications.

## Section 5 – Corporate Priorities

The delivery of effective defence against appeals and planning enforcement has a direct role to play in the achievement of Council Corporate priorities, including ‘Keeping neighbourhoods clean, green and safe’ and ‘Supporting our Town Centre, our local shopping centres and businesses’.

The objectives of the Council’s involvement in appeals and planning enforcement, set out in this report will contribute directly to improving the physical environment of the Borough and reinforcing the integrity of the statutory planning process, for the benefit of the Borough and its residents and businesses.

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 17.2.15		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 26 February 2015		

## **Section 6 - Contact Details and Background Papers**

**Contact:** Beverley Kuchar, Head of Development Management and Building Control, x6167

**Background Papers:**  
Enforcement Register Q 1 - 3 2014/15