



PLACES OVERVIEW AND SCRUTINY SUB-COMMITTEE

26 March 2024

Subject Heading:

Planning Enforcement Review of Resources

ELT Lead:

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Policy context:

Havering Local Plan

SUMMARY

Following the recommendation of the Local Government Ombudsman (LGO), a review of resources for the Enforcement function within planning has been undertaken.

The review has been completed, setting out the current issues within Planning Enforcement and makes recommendations in relation to recruitment, enforcement plan, business support, interaction with planners and performance monitoring and performance.

RECOMMENDATIONS

That this report and appended review be noted.

REPORT DETAIL

- 1.1 On 24th November 2023, a report from the Local Government Ombudsman (LGO) was issued in relation made against the Council that a planning condition requiring a landscaping scheme had not been enforced. The LGO conclusion found fault which caused an injustice and could happen again.

1.2 As part of the LGO findings, the Council agreed to the following action:

carry out a review of its planning enforcement service to determine whether it has the resources it needs to carry out its functions. The outcome of the review should be reported to the relevant scrutiny committee. This should happen within six months from the date of our final decision.

1.3 The review has been carried out by the Head of Strategic Development in the Planning Service. The conclusion reached is that the enforcement function is currently not adequately staffed and contributes to workload issues and ability to deal with investigations in a timely manner.

1.4 The Review:

- outlines the main functions of the service;
- analyses the current resources, workload and performance;
- assesses the main issues arising as a result of the analysis carried out;
- recommends an action plan to deal with the issues identified.

1.5 The Review is included as an Appendix to this report.

1.6 In accordance with the LGO decision, the review is being reported to this scrutiny sub-committee.

1.7 The Sub-committee is invited to note the content of the review and the actions recommended.

IMPLICATIONS AND RISKS

Financial implications and risks: None. The Sub-committee is not a decision making body. The recommendations in the Enforcement Review may have implications should budget (e.g. salary budget) not exist, but any change to budgets would need to be agreed as part of Council's budget setting.

Legal implications and risks: None. The report is for noting.

Human Resources implications and risks: None. The report is for noting. Currently any recruitment needs are assessed and approved through the Council's recruitment panel.

Equalities implications and risks: Havering has a diverse community made up of many different groups and individuals. The Council values diversity and believes it

essential to understand and include the different contributions, perspectives and experience that people from different backgrounds bring.

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the council, when exercising its functions, to have due regard to:

- I. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- II. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- III. the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Environmental and Climate Change implications and risk: None

BACKGROUND PAPERS

1. Enforcement Report – See Appendix 1
2. LGO Decision – See Appendix 2

APPENDIX 1

London Borough of Havering

Review of Planning Enforcement Resourcing

1.0 Background

1.1 Following an investigation into a failure to deal with a planning enforcement matter, the Local Government Ombudsman (LGO) has recommended, and the Council agreed, to undertake a review of Planning Enforcement to determine whether it has the resources it needs to carry out its functions.

2.0 LGO Investigation

2.1 The matter investigated by the LGO involved the failure of a developer to correctly implement a landscaping scheme that was required as a condition of planning permission for additional flats at roof level to a block in Romford town centre. The landscaping condition was one of a number of conditions that were not complied with. Compliance with other conditions was achieved through negotiation with the developer, but the landscaping condition was still outstanding leading to the service of a Breach of Condition Notice. However, despite this, compliance with the condition was not achieved and landscaping in accordance with the approved details was still not provided. The LGO considered that the failure to ensure timely enforcement of the condition was at fault.

3.0 The Planning Enforcement Function and Powers

3.1 Planning Enforcement undertake the following main functions:

- Investigation of planning breaches including negotiation
- Taking enforcement action
- Prosecutions
- Direct action
- Defending planning appeals

3.2 The powers for Local Planning Authorities (LPAs) to take enforcement action is mainly contained in the Town and County Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Acts) and subsequent secondary legislation. Under the Acts, LPAs have powers to serve notices requiring certain actions to be taken to remedy any breaches identified. There is no requirement under the Acts that LPAs need to serve notices whenever there is a breach, rather the requirement to serve notices is "if they consider it expedient to do so". In that sense, the taking of

formal enforcement action is discretionary. However, the investigation of planning breaches is part of the statutory planning function and an inability to investigate or take action against breaches where permission would likely be refused would impact on the whole Planning Service, rendering the whole service ineffective. Public confidence in the planning process would be undermined by a failure to take appropriate enforcement action when required.

- 3.3 As confirmed by the LGO investigation and findings, there is an expectation that the planning enforcement investigation and, where required, remedy of breaches should be dealt with in a timely and effective manner.

4.0 The Planning Enforcement Team Staffing and Workloads

- 4.1 The Planning Enforcement Team is part of the Planning Service within the Planning and Public Protection Directorate within Place. The Planning Enforcement Team consists of the following structure:

- Planning Enforcement Team Leader x 1
- Planning Enforcement Deputy Team Leader x 1
- Senior / Planning Enforcement Officers x 5

- 4.2 Recruitment to the vacant posts last took place in 2019/2020, with one planning officer post and one deputy team leader post being successfully recruited to. Recruitment to 4 of the enforcement officer posts was not successful. From April 2023, following benchmarking against salaries for equivalent posts in London, the deputy team leader and enforcement officer posts have been subject to market supplements (team leader post has had market supplement since 2020).

- 4.3 The Planning Enforcement Team Leader reports to the Head of Development Management – this post is currently vacant so management escalation is to the Head of Strategic Development and Director of Planning and Public Protection.

- 4.4 In terms of officers in post, the current position is as follows:

- Planning Enforcement Team Leader (Permanent) x 1
- Planning Enforcement Deputy Team Leader (Permanent) x 1
- Planning Enforcement Officer (Permanent) x 1
- Planning Enforcement Officer (Agency) x 2

Therefore, in terms of officers in post against establishment, there is currently a shortfall of 2 officers.

- 4.5 Prior to September 2022, the service was more than fully staffed with 5 additional agency staff covering 4 vacant posts, plus a funded, extra to establishment post. However, due to the high costs of agency staff compared with permanent staff and financial pressures within the Planning

Places Overview & Scrutiny Sub-Committee, 26 March 2024

Service, the number of agency staff was reduced. The team contracted by 5 officers in October and November 2022.

- 4.6 In terms of workload, the following tables sets out some indication of the work of the team.

Cases Received/Closed

Period	Cases Received	Cases Closed
Apr 23 - Feb 24	414	453
Apr 22 - Mar 23	469	731
Apr 21 - Mar 22	675	602
Apr 20 - Mar 21	601	555

Current Cases on Hand

Post	Number of Cases
TL	61
DTL	132
Enf Off 1	101
Enf Off 2	154
Enf Off 3	126
Others (Traveller Pitches Allocated in Local Plan)*	30
Total	604

* sites allocated in the Local Plan awaiting planning applications or decisions so no active investigation taking place.

Enforcement Notices Served

Period	Notices Served
Apr 23 – Feb 24	34
Apr 22 – Mar 23	63
Apr 21 – Mar 22	80
Apr 20 – Mar 21	61

- 4.7 From the above, the following main issues can be identified:

- **There is a significant backlog of cases:** Historically, case levels have been very high, but there has been successful effort over recent years (particularly when fully staffed) to reduce the number of cases on hand. Despite this, the current number of cases on hand (604) exceeds the number of cases received in each of the last two years (469 22/23 and 414 23/Feb 24). This means that there is a “backlog” of cases that are at least a year old. It would be expected that some cases will take a while to resolve, particularly where formal notices are served which often result in an appeal (currently 10 notices at appeal, appeals can take a year or more to determine) and further negotiation before prosecution, which itself is a protracted process. However, at present there are over 300

cases which are over a year old, which is a significant number of the total caseload.

- **The number of cases per officer is very high:** The number of cases per officer makes it difficult for officers to manage cases in order to respond in a timely manner to new cases received and ultimately to resolve cases (the problem identified by the LGO). Furthermore, the longer the case is open, the more likely it is that there will be repeated contacts from residents and/or Members seeking updates which itself contributes to the officer workload. The consequences of high officer workloads contributes to the backlog of cases.
- **Notices Served reflects staffing levels:** A high number of notices served is not necessarily an indication of a good or efficient service albeit it is currently the only planning enforcement 'performance' indicator that central government monitors. In most cases where planning breaches are identified, it would be appropriate either to request remedy within a certain period or allow for the submission of a planning application to regularise the position. However, there are cases where the harm is such that it is expedient to serve a notice. The ability to serve a notice at the appropriate time would be related to the workload of the officer. Based on previous statistics, it is considered about 60 notices a year would be expected to be served and that a manageable workload per officer would be in the order of 80.

4.8 Other Issues:

Enforcement Plan: The current planning enforcement policy has not been updated since 2012 and does not fully reflect current practice, nor set out policy for dealing with issues such as vexatious complaints (for instance neighbour disputes rather than any planning breach that would warrant investigation). The National Planning Policy Framework states that 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 appropriate."

Monitoring of Planning Permissions: Currently, planning enforcement is a reactionary service, responding to reports of breaches received and with no proactive monitoring of applications being implemented.

Business Support: There is little dedicated business support for the planning enforcement service other than in relation to appeals, because of insufficient capacity within the Neighbourhoods Business Support Team. Officers are consequently involved in a significant amount of administrative work, including registering of new cases and monitoring generic email in-

boxes. This adds to workload and the ability to deal effectively with high caseloads.

Performance Monitoring: The Team Leader is responsible for monitoring the performance of the team. Performance monitoring is most effective when there are standards in place set out in the enforcement plan (see above) and the planning database system can produce data for useful analysis. Regular 1-1s and full case conferences are held, with areas of prioritisation identified. Monitoring data has been recently improved through Power BI reporting, but the limitations of the current database means that only a few performance measures can be accurately monitored.

Issues where Planning Applications Requested/Submitted: Where breaches are identified that do not cause obvious significant harm, it would be appropriate to invite a planning application. Where planning applications are received, the standard of submission tends to be poor, which in turn results in additional work for the planning officers dealing with planning applications. This creates a “vicious circle” where the enforcement case remains open and unresolved while the planning application remains undetermined. A further issue is in relation to inviting applications where there is little prospect of permission being granted, resulting in delays to formal action and additional workload for planning officers dealing with planning applications.

5.0 Actions Recommended

- 5.1 In relation to the specific reasons why the LGO sought a review of the service, it is agreed that at present the planning enforcement team in the planning service does not have the resources to carry out its functions. An Action Plan is therefore set out below in order to address this issue:

Recruitment to Vacant Establishment Posts: Successful recruitment would enable reduction in officer workloads and allow more timely resolution of complaints or the taking of formal action. Anecdotally, there are problems nationwide in recruiting enforcement officers, but as no recruitment has taken place for a number of years and more competitive salaries achieved through market supplements, it is considered that recruitment should take place. Recruitment would be dependent on agreement of the Recruitment Panel and ensuring that sufficient budget is available. Timescale: To begin progress from April 2024

Adoption of Enforcement Plan: An updated enforcement plan has been drafted and will form part of an overall Enforcement Policy for the Planning and Public Protection Directorate for approval this year. Timescale: Policy adopted by December 2024

Places Overview & Scrutiny Sub-Committee, 26 March 2024

Explore Additional Business Support: Explore scope of support available, particularly around administrative tasks of new case registering and handling initial contacts. This can only be explored as part of the wider look at business support needs across Place, which the Planning and Public Protection Directorate forms part of. Timescale: Ongoing as part of review

Greater Interaction between Enforcement and Planning Officers: Better interaction would result in increased learning and development for officers; prioritisation of retrospective planning applications and making better informed decisions as to whether to invite planning applications to regularise any breach. Timescale: From April 2024

Expand Reporting on Performance to Lead Member and Planning Committees: Currently, only numbers of cases received and closed and notices served is reported to the committees each quarter. It is recommended that in addition, current case load, including number of open cases per officer be included in any reporting so issues of backlog and output can be more easily identified and reported on. Timescale: From April 2024

Review Undertaken By: Simon Thelwell, Head of Strategic Development

Date of Review: February 2024

APPENDIX 2