

Subject:	Planning Enforcement Yearly Report April 2010 – March 2011		
Date of Meeting:	20th July 2011		
Report of:	Head of Planning and Public Protection		
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Ward(s) affected:	All		

1. RECOMMENDATIONS:

That Members' note the content of the report

2. BACKGROUND

During the consultation undertaken as part of the development of the Planning Enforcement Policy Document (PEPD), Members and the residents expressed an interest in being informed about the progress and outcomes of enforcement investigations. As such the PEPD, requires an annual monitoring report to be presented to the Planning Committee.

3. SUMMARY OF ENFORCEMENT INVESTIGATIONS APRIL 2010- MARCH 2011

During the 2010-2011 period, 815 potential breaches of planning control were reported to the Planning Enforcement Team. A total of 719 cases (including some reported prior to April 2010) have been closed during the same period following enforcement investigations. There are currently 330 live enforcement investigations.

In 37% of the cases closed, there was found to be no breach of planning control.

In 14% of the cases closed, it was determined that it was not expedient to pursue formal enforcement proceedings, as the breach was minor or was not causing unacceptable harm.

In 49% of cases there were breaches of planning which needed to be investigated and were significant.

Where there was found to be a significant breach of planning control, or where development was considered to be causing unacceptable harm, compliance was achieved in 45% of cases, before formal enforcement action was required.

In 4% of cases closed, compliance was achieved through the issuing of a formal enforcement notice.

4. ENFORCEMENT INVESTIGATIONS

Enforcement Notices

Serving an Enforcement Notice is the most common and most effective method of remedying unauthorised development. Enforcement Notices are served early in an investigation when the breach of planning control is causing significant harm or where the transgressor has made it clear that they are unwilling to remedy the breach. The transgressor has the right to appeal against the notice, and the appeal is considered by the Planning Inspectorate.

Twenty Enforcement Notices have been served in the 2010-2011 period. The table in appendix 1 summarises the breach of planning control and current status of the investigations in relation to each of the properties against which enforcement notices have been served.

Enforcement Notice Appeals

If an appeal is lodged against an enforcement notice, the requirements of the notice are held in abeyance until the appeal is determined by the Planning Inspectorate. The grounds upon which an enforcement notice can be appealed include:

- Ground (a) – that planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have been complied with should be discharged.
- Ground (b) – that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
- Ground (c) - that there has not been a breach of planning control.
- Ground (d) – that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
- Ground (e) – the notice was not properly served on everyone with an interest in the land.
- Ground (f) – that steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome objections.
- Ground (g) – the time given to comply with the notice is insufficient or unreasonable.

The Planning Inspectorate will dismiss or allow the appeal and also have the ability to vary the enforcement notice should they feel this necessary. On some occasions they make split decisions – part allowing and part dismissing the appeal. The table below indicates the outcomes of enforcement appeal decisions determined between the 2010-2011 period.

Address	Ward	Breach	Appeal Decision
33 Sydney Street	St. Peter's & North Laine Ward	Alteration of shop front (installation of ATM) without planning consent	Dismissed
114 Hythe Road	Preston Park		Dismissed
7 Newells Close	Woodingdean	Raised hard standing at front of property	Dismissed
8 Pavilion Parade	Queens Park	Change of use from offices to flats	Dismissed (Costs awarded to Council)
9 Benfield Close	South Portslade	Rear extension	Dismissed
24 Walpole Terrace	Queens Park	Installation of plastic windows	Dismissed
79 – 80 Western Road	Regency	Installation of air conditioning units	Dismissed
124 Elm Grove	Elm Grove and Hanover	Alterations to a shop front	Dismissed
21 Brunswick Place	Brunswick and Adelaide	Plastic windows	Dismissed
21 Lloyd Road	Stanford	Solar panels, materials not in accordance to approved plans	Dismissed

One home owner was prosecuted for failing to comply with an enforcement notice. This even though an appeal had been dismissed by the Planning Inspectorate. Following the release of the appeal decision, and even though Officers provided additional time for compliance with the enforcement notice, the homeowner failed to carry out the necessary works, to remove a rear external staircase in a conservation area. As such, the Enforcement and Investigations team instigated prosecution proceedings, resulting in the homeowner being fined £1600.00 and ordered to pay the Councils costs of £1,260.00. The homeowner has subsequently complied with the enforcement notice.

Breach of Condition Notices

Breach of condition notices can be issued when an applicant fails to comply with a condition imposed on a planning permission. There is no right of appeal against a breach of condition notice.

Three breach of condition notices were issued during the 2010-2011 period all relating to the Aldi Store, 2 Carlton Terrace, South Portslade. The conditions related to the unloading and loading of vehicles outside of the permitted hours, the hours of operation of the premises and the failure to provide three hours free parking for customers. The transgressor has complied with the notice relating to the latter of the three conditions, but is yet to comply with the conditions relation to loading and operation.

Belmont Homes were prosecuted for their failure to install bonded pathways in the garden area of a new housing development at Coastal Place, 55 New Church Road, Westbourne. As a result of the prosecution, Belmont Homes was fined £700.00, and ordered to pay the Councils costs of £1020.00. Belmont Homes have now carried out the necessary works to the pathways.

The operators of a fish and chip shop at 116 St James Street were prosecuted for failing to comply with a breach of condition notice relating to hours of operation. The operators were fined £450.00. The premise has now changed hands and the new operators are adhering to the conditioned operating hours.

Section 215 Notices

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood, the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to improve the condition of the land or building. Failure to comply with the Notice is a criminal offence. The Council also has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

A total of eleven Section 215 notices were issued between the 2010-2011 period as summarised in the table below.

Address	Ward	Latest update
Anston House, 137 – 147 Preston Road	Preston Park	Awaiting compliance
92 Sackville Road	Goldsmith	Works being carried out to comply with notice
87 Chester Terrace	Preston Park	Awaiting compliance
3 Rudyard Road	Preston Park	Awaiting compliance
149 Kingsway	Westbourne	Awaiting compliance
151 Kingsway	Westbourne	Awaiting compliance
Lawncroft, 155 Kingsway	Westbourne	Court summons has been issued in relation to none compliance with the notice
22 Ticehurst Road	East Brighton	Complied
78 Stanford Avenue	Preston Park	Awaiting compliance
7 Symbister Road	South Portslade	Complied

Land to the rear of Kimberley Road	Moulsecoomb & Bevendean	Awaiting compliance
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As with all enforcement investigations, every effort is made to encourage transgressors to carry out the required works prior to formal action becoming necessary. When transgressors refuse, and subsequently fail to comply with Notices, the Enforcement and Investigations team instigates prosecutions for non-compliance with the Notices. Three such instances have occurred during the 2010-2011 period, which are summarised in the table below.

Address	Ward	Result	Update
53 Dale Crescent	Patcham	Fine £175 Costs £500	Council carrying out works with costs to be recovered from owner
92 Sackville Road	Goldsmith	Fine £100 Costs £820	New owner carrying out works
22 Ticehurst Road	East Brighton	Fine £1000 Costs £480	Complied

Following a successful prosecution in 2009 and despite repeated attempts to persuade the owner to improve the condition and appearance of 2 Ryde Road, Hanover and Elm Grove, Officers instructed contractors to carry out the necessary works in October 2010. All monies spent in relation to the work have been successfully recovered from the owner.

5.0 OTHER SIGNIFCANT ACHIEVEMENTS

Increased Public Awareness

Part of the work of the team involves raising public awareness. The strategy during the 2010-2011 period, has been for the Planning Enforcement and Investigations Team to place enforcement articles in City News, issued press releases to local newspapers and enhance and regularly update the Planning Enforcement and Investigations web page.

When requested the team manager can and does attend residents meetings.

Public awareness amongst residents does appear to be improving with residents and developers regularly remedying breaches of planning control without formal enforcement action becoming necessary.

Reduction of Live Cases

Over the 2010-11 period Officers have successfully continued to reduce the number of live cases from the previous year. This has enabled the team to become more pro-active in relation to the monitoring of planning conditions and allowed more time to be focused on improving the condition and appearance of dilapidated properties through use of Section 215 powers.

Site Waste Management Plan Regulations

This year, the Enforcement and Investigations team, in partnership with representatives from the South East Centre for the Built Environment (SECBE), have been involved in a successful cutting edge pilot project in relation to the enforcement of the Site Waste Management Plan Regulations (SWMP) 2008. During the course of the pilot project, over 120 people from the construction industry within the Brighton and Hove area have benefited from training in relation to SWMP. As a result of the success of the pilot project, SECBE have secured further funding, which through partnership with the Local Planning Authority, will enable the pilot project to be rolled out to five neighbouring authorities.

It is hoped that the Enforcement and Investigation Teams continued involvement and training in this area, will put Brighton and Hove City at the forefront of managing construction waste and assist the construction industry in making saving on their costs.

Control of Estate Agent Boards

On the 10th August 2010 an inspector authorised by the Secretary of State modified the previous Regulation 7: Direction restricting deemed consent for estate agents boards. The modified direction relates to the display of advertisements for residential properties under Class 3A in Part 1 of Schedule 3 to the Regulations within specified areas within the City.

The regulation 7 direction came into force on the 20th September 2010 controlling the display of estate agent boards within a number of the Cities conservation areas. With the assistance of members of the public, planning enforcement officers have surveyed nearly all the roads within the affected areas resulting in a vast reduction in the number of estate agent boards on display. Unfortunately despite sending several warning letters, a few estate agents persisted in erecting boards within the affected areas, leaving officers with no option but to begin prosecution proceedings. The table below shows the outcome of the prosecutions taken against estate agents.

Address	Ward	Penalty	Update
Eaton Mansion, Eaton Gardens	Goldsmid	Fined £1000.00 Costs £480.00	Complied
6 Cromwell Road	Goldsmid	Fined £1000.00 Costs £1200.00	Complied

Prosecutions

This year there were nine prosecutions in total which equated to fines totalling £6,625 and the Council being awarded costs of £8,280. Officers will continue to prosecute where it is appropriate and reasonable to do so.

Enforcement Appeals

Officers are proud that they have achieved a 100% success rate in defending appeals lodged against enforcement notices over the past year and are keen to maintain this success in the forthcoming year.

6.0 THE COMING YEAR

The planning investigations and enforcement team will continue to work with other Council departments to resolve issues affecting residents. Particular focus will be put on assisting the Council's empty properties officers, where appropriate, to improve the condition and appearance of empty properties and ultimately bring them back into use. Areas within the City will be identified for pro-active enforcement projects to improve the condition and appearance of [areas](#) that may be in need of attention. This pro-active action has already begun around Brighton Station and it is hoped that significant improvements will be made to properties [surrounding](#) the station over the summer months.

[In 9 months](#) the planning enforcement database will be migrating to a new database [allowing](#) current procedures and processes to be reviewed and improved. It is [envisaged](#) that the new database will make it easier for residents to access more information about planning enforcement matters [via the](#) Council website.

SUPPORTING DOCUMENTATION

Appendices:

1. Enforcement Notices served between, April 2010 – March 2011.

APPENDIX 1

Address	Ward	Breach	Update
8 Selham Close	Hollingbury and Stanmer	Fence in front garden of property	Complied
32 Devonshire Place	Queens Park	Conservatory added to the rear of property	Complied
8 Pavilion Parade	Queens Park	Unauthorised change of use from offices to flats	Complied
24 Walpole Terrace	Queens Park	Installation of plastic windows	Awaiting compliance
Land to the rear of 1 Orchard Gardens	Stanford	Commercial parking at a domestic property	Complied
36 Victoria Terrace	Regency	Staircase at the rear of property	Complied
269 Kingsway	Wish	Extensions at rear of property	Awaiting compliance
Block K, New England Quarter	St Peter's & North Laine	Childrens play area not installed	Awaiting compliance
124 Elm Grove	Hanover & Elm Grove	Alterations to a shop front	Awaiting compliance
21 Lloyd Road	Stanford	Solar panels, materials not in accordance to approved plans	Awaiting compliance
33 Sackville Road	Westbourne	Shed in front garden	Complied
114-115 Edward Street	Queens Park	Change of use of storeroom in basement into a separate self contained flat	Awaiting compliance
91 Mill Lane	South Portslade	Roller shutter and associated housing unit	Awaiting compliance
75-79 East Street	Regency	Shop front and fascia sign	Awaiting compliance

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3 St Johns Place	Queens Park	Conversion of property into flats	Complied
3 St Johns Place	Queens Park	Raised terrace in rear garden	Awaiting compliance
126a Church Road	Central Hove	Plastic windows in a conservation area	Awaiting compliance
128 Church Road	Central Hove	Plastic windows in a conservation area	Awaiting compliance
128 Church Road	Central Hove	Use of 1 st Floor office as a residential flat	Awaiting compliance
49 Surrenden Road	Withdean	Outbuilding used as a separate residential unit	Awaiting compliance

*NB – These enforcement notices already appear on the Enforcement Register

