

COMMITTEE

Agenda Item

Brighton & Hove City Council

Subject:	Planning Enforcement Yearly Report April 2011 – March 2012		
Date of Meeting:	18 July 2012		
Report of:	Head of Planning & Public Protection		
Contact Officer:	Name:	Gerard McCormack	Tel: 29-2031
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Ward(s) affected:	All		

1. SUMMARY AND POLICY CONTEXT:

- 1.1 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.

2. RECOMMENDATIONS:

- 2.1 That members' note the contents of the report

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Case load management within planning enforcement

- 3.2 During the 2011-12 period a total of 822 cases have been closed following enforcement investigations which is an increase of 103 cases from the previous year. There are currently 345 live enforcement investigations.
- 3.3 In 36% of the cases closed, there was found to be no breach of planning control.
- 3.4 In 8% of 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.
- 3.5 In 56% of cases there were breaches of planning which needed to be investigated and were significant.
- 3.6 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 51% of case, before formal action was required.
- 3.7 In 5% of cases closed, compliance was achieved through the issuing of a formal enforcement notice.

- 3.8 The table below provides a comparison between this year and last as to the reasons why cases were closed.

	No Breach	Not Expedient	Full Compliance	Compliance following notice
2011/12	294 (36%)	66 (8%)	419 (51%)	43(5%)
2010/11	271 (37%)	100 (14%)	321 (45%)	27 (4%)

Enforcement notices

- 3.9 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.
- 3.10 Twenty-four Enforcement Notices have been served in the 2011-2012 period, an increase of four from the previous year. 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

- 3.11 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.
- 3.12 The grounds upon which an enforcement notice can be appealed include:
- 3.13 *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.
- 3.14 *Ground (b)* – that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
- 3.15 *Ground (c)* - that there has not been a breach of planning control.
- 3.16 *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.
- 3.17 *Ground (e)* – the notice was not properly served on everyone with an interest in the land.
- 3.18 *Ground (f)* – that steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome objections.

3.18 *Ground (g)* – the time given to comply with the notice is insufficient or unreasonable.

3.19 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 2011-2012 period.

Address	Ward	Breach	Appeal Decision	Update
91 Mill House Lane	South Portslade	Roller shutters installed	Dismissed	Awaiting compliance
128 Church Road	Central Hove	Cease the unauthorised use of the first floor of the property as a residential unit	Dismissed	Awaiting compliance
128 Church Road	Central Hove	Installation of plastic windows	Dismissed	Waiting compliance
1 Carlisle Road	Westbourne	Storage container	Dismissed	Complied
44 Crescent Drive South	Rottingdean Coastal	Railing to create balcony	Dismissed	Complied
7 Greenways	Rottingdean Coastal	Roof tiles on extension not matching original	Notice quashed	Notice quashed
Unit 7, 10 Jubilee Street	St Peter's & North Laine	Shopfront	Dismissed	Compliance expected 1 st February 2013

3.20 With all enforcement investigations, every effort is made to encourage transgressors to carry out the required works prior to formal action becoming necessary. This year four property owners were prosecuted for falling to comply with enforcement notices served against them during the 2011-2012 period, which are summarised in the table below.

Address	Ward	Breach	Penalty Imposed
17 Preston Road	Preston Park	Container in rear garden	Fine £33 Costs £820
24 Walpole Terrace	Queens Park	Plastic windows	£4000 Fine £1095 Costs
79-80 Western Road	Brunswick & Adelaide	Installation of three windows	Fined £2000 Costs £1053
126 Church Road	Central Hove	Plastic windows	Fined £1300 Costs £900

Section 215 Notices

- 3.21 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.
- 3.22 A total of thirty two Section 215 notices were issued between the 2011-2012 period as summarised in appendix 2. The significant increase in the number of notices served from eleven the previous year reflects the increase in targeted pro-active work being carried out to improve the condition and appearance of properties within the city and in turn to improve local visual amenity.
- 3.23 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 occurred during the 2011-2012 period, which are summarised in the table below.

Address	Ward	Penalty
Lawncroft, Kingsway	Westbourne	Fine £750 Costs £1315
Rear of Ladysmith and Kimberley Roads	Moulsecoomb & Bevendean	Fine £150 Costs £500
87 Chester Terrace	Preston Park	Conditional discharge Costs £1000

- 3.24 This year officers instructed contractors to carry out the necessary works to improve the condition and appearance of 53 Dale Crescent (Patcham) attempts to persuade the owner to voluntarily carry out the works failed even following a

successful prosecution in 2010. Officers are taking the necessary steps to ensure that all monies spent are recovered in due course.

Breach of Condition Notices

- 3.25 These can be used as an alternative to an Enforcement Notice. There is no right of appeal against a breach of condition notice and 4 were this year compared to 3 the previous year. The table below provides details on the breach of condition notices that have been served between 2011-2012.

Address	Ward	Breach	Update
Aldi Store, 2 Carlton Terrace	South Portslade	Failing to adhere to conditioned delivery hours	Complied
60 West Way	Hangelton & Knoll	Landscaping details not submitted or implemented	Compliance expected 1 st September 2012
60 West Way	Hangleton and Knoll	Cycle storage not provided	Compliance expected 1 st September 2012
Papa Johns, 13 Preston Road	Preston Park	Operating outside of the conditioned hours	Complied

- 3.26 The company secretary of the Aldi store in Portslade was prosecuted for failing to provide three hours free parking. As a result of the prosecution Aldi submitted an application to vary to the condition to allow them to provide two hours free parking rather than three and they are currently complying with the terms of this varied condition.

Address	Ward	Penalty
Aldi Store, 2 Carlton Terrace	South Portslade	Fine £600 Costs £1200

Other significant achievements

- 3.27 *Increased Public Awareness*
Part of the work of the team involves raising public awareness. The strategy during the 2011-2012 period, has been for the Planning Enforcement and Investigations Team to place enforcement articles in planning magazine, issue press releases to local newspapers and enhance and regularly update the Planning Enforcement and Investigations web page.
- 3.28 When requested the team manager attends residents meetings to discuss planning enforcement matters that are of concern. The awareness amongst residents does appear to be improving with residents and developers regularly remedying breaches of planning control without formal enforcement action becoming necessary. This is supported by the fact almost 100 more cases have been closed due to full compliance having been achieved compared to last year.

3.29 *Workload*

Despite the number of live case increasing over the past twelve months officers have been successful in ensuring that cases are being investigated in accordance with the timeframes outlined in the planning enforcement policy. Therefore there is currently no backlog of cases waiting to be allocated or investigated.

3.30 The team has continued to take pro-active action which has focused on improving the condition and appearance of dilapidated properties through use of Section 215 powers. This action has seen significant improvements to the appearance of properties around Brighton station and long term derelict sites along the seafront.

3.31 *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.

3.32 The regulation 7 direction came into force on the 20th September 2010 controlling the display of estate agent boards within a number of the City's conservation areas. In 2010/11 with the assistance of members of the public, planning enforcement officers surveyed nearly all the roads within the affected areas resulting in a vast reduction in the number of estate agent boards on display. This year work has continued which has seen the eradication of estate agent boards within the designated areas.

3.33 During the 2011-12 period two estate agents were prosecuted for erecting boards in the designated areas without consent. Details of these prosecutions are provided in the table below.

Address	Ward	Penalty
Park Terrace	St Peters & North Laine	Fine £400 Costs £450
Cromwell Road	Central Hove	Fine £1000 Costs £900

3.34 Officers are proud to once again 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.

3.35 The work of the planning team in developing and implementing a process for the enforcement of Site Waste Management Plans (SWMPs), was recognised at both a local and national level at the RPTI planning awards. The judges in summing commented as follows:

3.36 "The judges felt the outcome was a win-win result, helping to reduce building costs for developers, while encouraging sustainable development and efficient use of resources. In their view, the local image of planning has been improved

by going beyond the traditional limits of planning departments through securing cooperation with other Council divisions.

The coming year

- 3.37 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 proactive enforcement projects to improve the condition and appearance of areas that may be in need of attention.

4. CONSULTATION

None carried out.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no financial implications relating to this enforcement report that fall outside the normal service delivery for the department.

Legal Implications:

- 5.2 There are no legal implications relating to this enforcement report that fall outside the normal service delivery for the department.

Equalities Implications:

- 5.3 There are no equalities implications relating to this enforcement report that fall outside the normal service delivery for the department.

Sustainability Implications:

- 5.4 There are no sustainability implications relating to this enforcement report that fall outside the normal service delivery for the department.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications relating to this enforcement report that fall outside the normal service delivery for the department.

Risk and Opportunity Management Implications:

- 5.6 There are no risk and opportunity management implications relating to this policy document that fall outside the normal service delivery for the department

Corporate / Citywide Implications:

- 5.7 There are no corporate or citywide implications relating to this policy document that fall outside the normal service delivery for the department.

SUPPORTING DOCUMENTATION

Appendices:

1. Planning Enforcement Notices issued between 2011/12.
2. Section 215 amenity notices issued in 2011/12 to improve the condition and appearance of properties and land.

Appendix 1

Planning Enforcement Notices issued between 2011/12.

	Address	Ward	Breach	Update
April	36 Hollingdean Terrace	Hollingbury & Stanmer	Platform at rear of property	Complied
May	101a and b Preston Drove	Preston Park	Container on front forecourt	Complied
May	1 Carlisle Road	St Peter's & North Laine	Container on front of property	Complied
May	114/115 Edward Street	Queen's Park	Plastic windows and doors	Complied
May	54/55 Meeting House Lane	Regency	Smoking shelter at rear of premises	Complied
June	17 Preston Road	Preston Park	Rear store	Complied
June	119 Lewes Road	Hanover & Elm Grove	Boundary fencing	Expected compliance 1 st July 2012
July	44 Crescent Drive South	Woodingdean	Railing to create balcony	Complied
July	24 Albert Road	St Peters & North Laine	Two storey side extension	Complied
July	82 Elm Drive	Hangleton & Knoll	Shopfront	Complied
July	Unit 7, 10 Jubilee Street	St Peters & North Laine	Shopfront	Expected compliance 1 st February 2013
August	2 Bristol Street	East Brighton	Garage door at front of property	Awaiting compliance
August	7 Greenways	Rottingdean Coastal	Roof tiles on extension not matching original	Enforcement notice quashed
September	159 Edward Street	Queens Park	Roof extension not it accordance to approved plans	Appeal Allowed
September	Wyndham House, 1	Queens Park	Plastic windows	Compliance expected 14 th

	Wyndham Street		and doors	August 2012
October	8 Medina Terrace	Central Hove	Shed in rear garden	Complied
October	20 Victoria Terrace	Central Hove	Plastic windows at rear of property	Appeal Allowed
January	20 Lenham Road West	Rottingdean Coastal	Two storey side extension	Compliance expected 1 st November 2012
January	100 St Georges Street	Queens Park	Removal of window and installation of double doors and erection of railings to create a roof terrace	Awaiting compliance
February	4-5 Station Approach	Moulsecomb & Bevenden	Burger van in rear garden	Awaiting appeal decision
February	250 London Road	Withdean	Raised platform	Awaiting appeal decision
March	Medicine Chest	Brunswick & Adelaide	Remove boards from shopfront	Awaiting compliance
March	127 Western Road	Brunswick & Adelaide	Plastic windows installed	Awaiting appeal decision
March	1 Carlisle Road	Westbourne	Container in rear garden	Complied

Appendix 2

Section 215 amenity notices issued in 2011/12 to improve the condition and appearance of properties and land.

	Address	Ward	Latest update
March	9 Barnet Way	Hangleton & Knoll	Complied
March	17 York Place	St Peters & North Laine	Awaiting compliance
March	243 Hartington Road	Hanover & Elm Grove	Awaiting compliance
March	25 Bampffield Street	South Portslade	Complied
February	69-70 Queens Road	St Peters & North Laine	Compliance expected 1 st January 2013
February	6 St Georges Road	Queens Park	Compliance expected 1 st September 2012
February	3 St Georges	Queens Park	Compliance expected 1 st September 2012
January	13 Wilbury Grove	Central Hove	Awaiting compliance
January	4 Bedford Place	Regency	Complied
January	23 Oriental Place	St Peters & North Laine	Awaiting compliance
January	24 Oriental Place	St Peters & North Laine	Awaiting compliance
January	7 and 8 York Place	St Peters & North Laine	Awaiting compliance
January	26 Richmond Place	St Peters & North Laine	Complied
January	20 Viaduct Road	St Peters & North Laine	Awaiting compliance
January	35 Lansdowne Place	Brunswick & Adelaide	Complied
November	1 Wilbury Villas	Goldsmith	Complied
September	43 Regency Square	Regency	Complied
September	Medina House, Kings Esplanade	Central Hove	Awaiting compliance
August	67 Queens Road	St Peters & North Laine	Complied
August	52 Hollingdean Terrace	Hollingbury & Stanmer	Complied
August	9 Bonchurch Road	Hanover & Elm Grove	Complied
August	10 Shanklin Road	Hanover & Elm Grove	Compliance expected 1 st September 2012
July	4 Terminus Road	St Peters & North Laine	Complied
July	Royal Alexandra Hospital	Regency	Complied
July	243 Hangleton Road	Hangleton & Knoll	Compliance expected 1 st September 2012
July	19 Sillwood Street	St Peters & North	Compliance expected

		Laine	1 st September 2012
May	131 Westbourne Street	Westbourne	Complied
May	66 Greenfield Crescent	Patcham	Complied
April	16 York Place	St Peters & North Laine	Complied
April	9-10 Victoria Road	Regency	Complied
April	27 Marine Square	East Brighton	Complied
April	59 Addison Road	Goldsmid	Complied