

<b>Item No.</b> 7	<b>Classification:</b> Open	<b>Date:</b> 17 October 2011	<b>Meeting Name:</b> Dulwich Community Council
<b>Report title:</b>	Planning application and planning enforcement performance for period 1 April 2011 to 31 August 2011.		
<b>Ward(s) or groups affected:</b>	College, East Dulwich and Village		
<b>From:</b>	Head of Development Management		

### **RECOMMENDATION**

- 1 That the report be noted.

### **BACKGROUND INFORMATION**

- 2 This report monitors the planning application, planning appeal, planning enforcement and planning enforcement appeal activity and performance within the Dulwich Community Council area.
- 3 Performance on the timeliness of decision making on planning applications and planning enforcement investigations is measured against borough-wide targets. For planning applications performance is split into three categories. The categories are for large scale and small scale 'major' applications, for 'minor' applications and for 'other' applications. Details of the types of applications falling within these three categories are set out in Appendix 1.
- 4 The locally set target for all three categories of planning applications is for 75% of all applications to be determined within statutory target period. The statutory target time period for the determination of 'major' applications is 13 weeks, or 16 weeks where the application is accompanied by an Environmental Impact Assessment, and for applications in the 'minor' and 'other' categories it is 8 weeks.
- 5 The significance of the 13 and 8 week target periods is that if an application has not been determined by the expiry of this period, an application's statutory expiry date, an appeal can be made to The Planning Inspectorate against the non-determination of the application.
- 6 The performance target for appeals is based on the number of all decided appeals that were allowed (i.e. lost by the Council) as a % of all appeal decisions made where the Council has refused planning permission. This target is currently set at 30%. The calculation of this performance indicator does not include appeals against the imposition of conditions or non-determination [where the Council has not made a decision on an application]. The calculation also excludes all other appeal types, e.g. those in respect of advertisements, certificates of lawfulness, prior approvals and enforcement appeals.
- 7 The local performance target for planning enforcement investigations is for in 80% of cases a decision to be made within 8 weeks of the start date for the investigation as to whether or not there has been a breach of planning control.

## **KEY ISSUES FOR CONSIDERATION**

### **Planning application performance**

- 8 Major applications: Only one major application was decided during the period and this was decided over target. It was granted planning permission.
- 9 Minor applications: 41 applications were decided of which 28 (68.3%) were decided in target. 36 were granted permission and five refused permission.
- 10 Other applications: 139 applications were decided of which 109 (78.4%) were decided in target. 86 were granted permission, 14 refused permission and 39 certificates of lawful development and notification applications determined.
- 11 Applications received and decided: 192 applications were received, 181 decided and 9 were withdrawn. At the end of the period there were 84 outstanding applications in the Community Council area (see Appendix 2).
- 12 Of the decisions made, 167 (92.3%) were made under delegated powers, nine (5%) by the Community Council and five (2.8%) by Planning Committee. Of the nine decided by the Community Council seven were granted permission and two were refused permission.

### **Planning appeals performance**

- 14 During the period four appeal decisions were received against decisions made by the Council and one appeal was withdrawn. Of those appeals decided, two (50%) were allowed and two were dismissed. Both appeals allowed were against decisions made under delegated powers. Of the two dismissed appeals one was against a decision made by the Community Council. Eleven new appeals were received during the period and there are currently nine outstanding appeals in the Community Council area.

### **Summary of appeals performance**

- 15 A summary of the details of the decided appeals is set out in Appendix 3. In one appeal, that for 208 Barry Road, an application was made for an award of costs against the Council. A partial award was granted on the grounds of the unreasonable behaviour of the Council on a procedural matter that had resulted in the adjournment of the hearing when it originally opened on 01 June.

### **Planning enforcement performance**

- 16 New investigations: During the period 30 new investigations were started. Of these five related to College Ward, 16 to East Dulwich Ward and nine to Village Ward (see table Appendix 4).
- 17 Decided investigations: Decided investigations are those where a decision has been made that either:
- there was a breach of planning control, and formal enforcement action was required, or
  - there was a breach of planning control, but it was not expedient to take formal enforcement action, or
  - there was a breach of planning control but the breach has since ceased or been regularised, or
  - there was a breach of planning control but it was now immune from formal enforcement action, or
  - there was not a breach of planning control.

- 18 Of the 25 decided investigations the decision was that in 13 (52%) of these investigations there was no breach of planning control and in 5 (20%) the breach ceased as a result of the intervention of the council. In a further 3 (8%) cases the breach was immune from enforcement action. In three (12%) cases the breach was regularised by the grant of planning permission (see Appendix 5 for a breakdown by ward). Appendix 6 shows the number of investigations received since 01/01/2009 that are still open.
- 19 Of the 25 investigations which were decided, 16 (64%) were decided within the eight week target (see Appendix 7 for comparative data with other Community Council areas).

#### **Formal enforcement action**

- 20 Formal enforcement action is being taken against the following breaches of planning control:
- 21 49-51 Norwood Road – use of restaurant premises as a night club continuing. Further r enforcement action considered.
- 22 75-79 Norwood Road – continued monitoring of premises to establish whether there is regular night club use of the premises.
- 23 Tree replanting to land at rear of 19 Village Way – Tree replacement notice to be issued by end of September.

#### **Summary of planning enforcement performance**

- 24 There are 26 outstanding enforcement investigations within the Dulwich Community Council area including the formal enforcement action outlined above.
- 25 One planning enforcement appeal decision was received in respect of the Community Council area during the period. The appeal was on the White Gothic House, Lordship Lane.
- 26 The appeal was against a planning enforcement notice issued by the Council against the erection of the White Gothic House and its use as six self contained flats without planning permission next to a Grade II listed building.
- 27 The appeal was allowed on 09/06/2011 and planning permission was granted on the deemed application by the Inspector (under S.177(5) powers of the TCPA, 1990 as amended) to retain the building on the site subject to nine conditions. The first 8 conditions require an improvement in the appearance of the building and site in order to preserve the setting of the adjoining listed building. This will be done through replacement: heritage roof lights, natural roof slates, entry porch, painted timber windows, hard and soft landscape works, boundary treatment, cycle and refuse storage. The details to discharge these conditions were required to be submitted to the Council within 3 months of the appeal decision i.e. by 09/09/2011. The details have been submitted to the Council.
- 28 Condition 9 of the decision requires the building to be demolished to the ground in its entirety if the appellant fails to comply with any of the conditions 1 to 8.
- 29 However, the appellant has now applied to challenge the Inspector's decision in the High Court. It falls to the Secretary of State to defend the claim primarily, however, the Council has been named as a second defendant.

#### **Community impact statement**

- 30 The content of this report monitoring development management performance is judged to have no or a very small impact on local people and communities. However, poor performance can have an adverse effect on all individuals, businesses and other organisations within the community who submit planning applications and who do not get a decision within a reasonable period.

### **Consultations**

- 31 No consultation has been carried out in respect of the contents of this report which is solely for the purpose of advising on the performance of the Development Management service in the determination of planning applications and planning appeals.

### **Human rights implications**

- 32 This report does not engage human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
- 33 Any rights potentially engaged by this report are not considered to be unlawfully interfered with.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Planning application performance statistics	Regeneration and Neighbourhoods Department 160 Tooley Street London SE1 2TZ	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: <a href="mailto:planning.enquiries@southwark.gov.uk">planning.enquiries@southwark.gov.uk</a>

## APPENDICES

No.	Title
Appendix 1	Definition of 'major', 'minor' and 'other' applications
Appendix 2	Planning applications decided
Appendix 3	Planning appeals decided
Appendix 4	Enforcement investigations received
Appendix 5	Enforcement investigations closed
Appendix 6	Enforcement investigations open
Appendix 7	Enforcement investigations performance

## AUDIT TRAIL

<b>Lead Officer</b>	Gary Rice, Head of Development Management	
<b>Report Author</b>	Phil Chambers, Group Manager, Project Management	
<b>Version</b>	Final	
<b>Dated</b>	5 October 2011	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	No	No
Strategic Director of Regeneration and Neighbourhoods	No	No
Strategic Director of Environment	No	No
<b>Date final report sent to Constitutional Team</b>		6 October 2011

**Definition of 'major', 'minor' and 'other' applications**

**Large scale major developments<sup>1</sup>**

- 1 Dwellings
- 2 Offices/research and development/light industry
- 3 Heavy industry/storage/warehousing
- 4 Retail, distribution and servicing
- 5 Gypsy and traveller pitches
- 6 All other large scale major developments

**Small scale major developments<sup>2</sup>**

- 7 Dwellings
- 8 Offices/research and development/light industry
- 9 Heavy industry/storage/warehousing
- 10 Retail, distribution and servicing
- 11 Gypsy and traveller pitches
- 12 All other small scale major developments

**Minor developments<sup>3</sup>**

- 13 Dwellings
- 14 Offices/research and development/light industry
- 15 Heavy industry/storage/warehousing
- 16 Retail, distribution and servicing
- 17 Gypsy and traveller pitches
- 18 All other minor developments

**Other developments**

- 19 Minerals
- 20 Changes of use -where no other works requiring planning permission are involved
- 21 Householder developments
- 22 Advertisements
- 23 Listed building consents to alter/extend
- 24 Listed building consents to demolish
- 25 Conservation Area consents
- 26 Certificates of lawful development
- 27 Notifications

**Notes**

<sup>1</sup> Large scale major applications comprise residential development for the creation of 200 or more dwellings for full applications and outline applications for sites of 4ha. or more.

For all other proposals it covers full applications for developments for the creation of 10,000sq.m.or more of new floorspace and for outline applications for sites of 2ha. or more.

<sup>2</sup> Small scale major applications comprise residential development for the creation of 10 to 199 dwellings for full applications and outline applications for sites from 0.5ha to less than 4ha.

For all other proposals it covers full applications for developments for the creation of between 1,000sq.m.and 9,999sq.m.of new floorspace and for outline applications for sites from 1.0ha to 2ha.

<sup>3</sup> Minor applications comprise residential development for the creation of 1-9 dwellings for full applications and outline applications where the site is less than 0.5ha.

For all other proposals it covers full applications for developments for the creation of less than 1,000m<sup>2</sup> of new floorspace and for outline applications where the site area is less than 1.0ha.

## APPENDIX 2

### Planning applications decided between 1 April 2011 to 31 August 2011

	No. decided	% decided in target	Granted	Refused
Large scale major	0	0	0	0
Small scale major	1	0	1	0
Minor	41	68	36	5
Other	139	78	86	14
<b>Total</b>	<b>181</b>	<b>76</b>	<b>123</b>	<b>19</b>

## APPENDIX 3

### Planning appeals decided between 1 April 2011 to 31 August 2011

**Address:** WHITE GOTHIC HOUSE, UNDERHILL ROAD  
LONDON SE22 0BU  
**Application No:** 10-AP-1683  
**Ward:** College  
**Community C'cil:** Dulwich  
**Proposal:** Existing use of property as four self contained flats on the ground and first floors.  
**Appeal Decision:** Withdrawn  
**Date of Decision:** 23/05/2011  
**Appeal Type:** Planning Non-determination Appeal  
**Appeal Ref:** APP/A5840/x/10/2136395  
**Recommendation:**  
**Decision Level:**  
**Council's Decision:** Withdrawn - Appeal ( Non  
Determination)  
**Date of Decision:** 15/09/2010

**Address:** 7 DULWICH WOOD AVENUE, LONDON, SE19  
1HB  
**Application No:** 11-AP-0280  
**Ward:** College  
**Community C'cil:** Dulwich  
**Proposal:** First floor side extension providing additional residential accommodation for dwellinghouse.  
**Appeal Decision:** Allowed  
**Date of Decision:** 10/06/2011  
**Appeal Type:** Refusal of Planning Permission  
**Appeal Ref:** APP/A5840/d/11/2151462  
**Recommendation:** Refuse permission  
**Decision Level:** Delegated Officer  
**Council's Decision:** Refused  
**Date of Decision:** 28/03/2011

#### Summary of decision:

The Inspector considered the main issue to be the visual impact of the proposed development.

He noted that the proposed first floor extension would be above an existing single storey side extension that abuts the boundary with No 5. He did not consider that the flank wall of the extension at an angle of 95 degrees to the front, following the alignment of the existing single storey side extension, would appear awkward or have a serious adverse visual impact. The extension would be set back 5m. from the front elevation of the original house and in terms of style and materials would reflect the original house. The development would not therefore look out of place or contravene plan policies in terms of visual impact.

Considering the concerns of the adjoining neighbour in respect of the effect of the proposal on natural light he did not consider any loss to be sufficient to justify a refusal of permission. Appeal decision allowed -

The Inspector did not share the views of the Council that the proposal would appear as an awkward addition to the side of the dwelling. They felt that the materials and design were in-keeping and as such planning permission should be granted. AC

**Address:** 166 COURT LANE, LONDON, SE21 7ED  
**Application No:** 10-AP-3305  
**Ward:** Village  
**Community C'cil:** Dulwich  
**Proposal:** Ground floor single storey rear extension and replacement of front store door with window and brickwork; all providing accommodation for dwellinghouse.  
**Appeal Decision:** Allowed  
**Date of Decision:** 10/06/2011  
**Appeal Type:** Refusal of Planning Permission  
**Appeal Ref:** APP/A5840/D/11/2151588  
**Recommendation:** Refuse permission  
**Decision Level:** Delegated Officer  
**Council's Decision:** Refused  
**Date of Decision:** 14/02/2011

#### Summary of decision:

Inspector considered main issues to be (a) impact on character and appearance of the Dulwich Village Conservation Area and (b) effect on amenity of neighbours.



On (a) the Council had accepted that the proposed alterations to the front of the property would not have a detrimental impact on the building itself or the Conservation Area. The Inspector agreed with this. With regard to the rear extension, which extends across the full width of the house, he considered that it would be subservient to the main house and would not have an unbalanced effect when viewed from the rear. It would not be visible from the public highway. It would therefore not be harmful to the Conservation Area or contravene policy.

On (b), although the extension would project 4m from the rear elevation and be 3.5m high, exceeding the 3m and 3m respectively limits in the residential design standards, the Inspector felt that, given the southerly aspect of the rear elevations, the proposal would have only a marginal impact on natural lighting to No 164 and would not be so dominant or overbearing when viewed from that property as to justify a refusal of planning permission. There would only be a limited effect on No 168 as an extension at the rear of that property already extends up to the appeal premises.

**Address:** 220B CRYSTAL PALACE ROAD, LONDON, SE22 9EL  
**Application No:** 10-AP-2923  
**Ward:** East Dulwich  
**Community C'cil:** Dulwich  
**Proposal:** Retention of replacement of pitched roof with flat roof; installation of railing around and door access to facilitate use as a terrace; at rear second floor level of maisonette.  
**Appeal Decision:** Dismissed  
**Date of Decision:** 26/08/2011  
**Appeal Type:** Refusal of Planning Permission  
**Appeal Ref:** APP/A5840/A/11/2150623/NWF  
**Recommendation:** Refuse permission  
**Decision Level:** Delegated Officer  
**Council's Decision:** Refused  
**Date of Decision:** 18/02/2011

**Summary of decision:**

The Inspector considered the main issues to be the effect of the proposal on (a) the living conditions of the occupiers of neighbouring dwellings, particularly in respect of overlooking and loss of privacy, and (b) the character and appearance of the building and area.

The Inspector considered that users of the rooftop terrace have direct views into the rear gardens of Nos 216-224 and into the first and second floor windows of Nos 218 and 222. The 0.62m high railings do little to screen the views of these areas that previously enjoyed high levels of privacy. She concluded that the proposal results in significant harm due to overlooking and loss and privacy. In addition the use of the terrace creates additional noise and other disturbance. This also results in harm to the living conditions on adjoining neighbours.

Although not easily seen from the street, the terrace is very visible from the upper rear windows and rear gardens of adjacent properties. The terrace has introduced an extensive area of decking and iron railings that are alien features in the street scene and any domestic paraphernalia on the terrace would add to clutter and be visually intrusive. She concluded on this issue that the proposal is harmful to the character and appearance of both the building and the area.

**Address:** 208 BARRY ROAD, LONDON, SE22 0JS  
**Application No:** 10-AP-0915  
**Ward:** East Dulwich  
**Community C'cil:** Dulwich  
**Proposal:** Change of use from single residential dwelling (C3) to children's Montessori nursery (D1) including roof conversion with two dormer window extensions to the rear and single storey rear extension to ground floor.  
**Appeal Decision:** Dismissed  
**Date of Decision:** 26/08/2011  
**Appeal Type:** Refusal of Planning Permission  
**Appeal Ref:** APP/A5840/A/11/2146631/NWF  
**Recommendation:** Refuse permission  
**Decision Level:** Dulwich Community Council  
**Council's Decision:** Refused  
**Date of Decision:** 09/08/2010

**Summary of decision:**

The Inspector considered the main issues to be (a) the effect on the supply of residential accommodation in the borough, (b) impact on amenity of nearby residents, particularly by reason of noise and disturbance, and (c) impact on highway safety. The Inspector noted that subsequently the Council had granted permission for a scheme with a reduced number of nursery places (20 instead of the 28 in the appeal

scheme) and the retention of a one bedroom flat for use by a member of staff. This permission was a material consideration in the determination of the appeal

On (a) the Inspector noted the Core Strategy requirement for a net increase of dwellings in the borough over the next 15 years and the importance of retaining the existing stock as part of this strategy. The appellant drew attention to the difficulties regarding the use of the staff flat and that such use would not be practical. The Inspector was not persuaded that these difficulties and restrictions would be so severe as to mean that the flat could not contribute to meeting the borough's housing needs. She accepted that there was a clear local demand for nursery places and that the Council's Children's Services confirmed that there is a need for child care but did not consider that this outweighed the complete loss of housing at this site. She concluded on this issue that the proposal would have an unacceptable adverse effect on the supply of residential accommodation in the borough.

On (b), whilst noting that an increase from the permitted 20 places to 28 would be a material increase, it was not considered that any additional noise and disturbance would be such as to justify a refusal of permission.

With regard to (c), the appellants' travel plan would encourage parents and carers to walk to the nursery with their children. The majority of children on the appellants' waiting list live within a 20 minute walk of the site and given the predominantly residential nature of the surrounding area the proportion of children attending the school that live nearby is unlikely to fall significantly. In any event, the Inspector concluded that even if a large proportion of children were taken to and from the nursery by car there is adequate on-street parking capacity to meet the demand. The proposal would therefore not prejudice highway safety.

However, the Inspector's favourable conclusions relating to residential amenity and highway safety were not sufficient to overcome the concerns regarding the loss of residential accommodation.

#### **Award of Costs**

Due to a procedural error by the Council in failing to give the necessary letter of notification of the hearing to all interested parties the hearing was opened and then adjourned. The appellants' claimed for their costs for aborted time and travel costs and the time for preparing again later for the hearing when it took place.

The Inspector found that the failure of the Council to notify persons about the hearing amounted to unreasonable behaviour that resulted in unnecessary expense incurred by the appellants. She awarded partial costs against the Council, these being limited to the costs incurred by the appellants and their professional adviser in preparing for and attending the adjourned hearing on 1st June.

**APPENDIX 4**

**Enforcement Investigations received between 01/04/2011 and 31/08/2011**

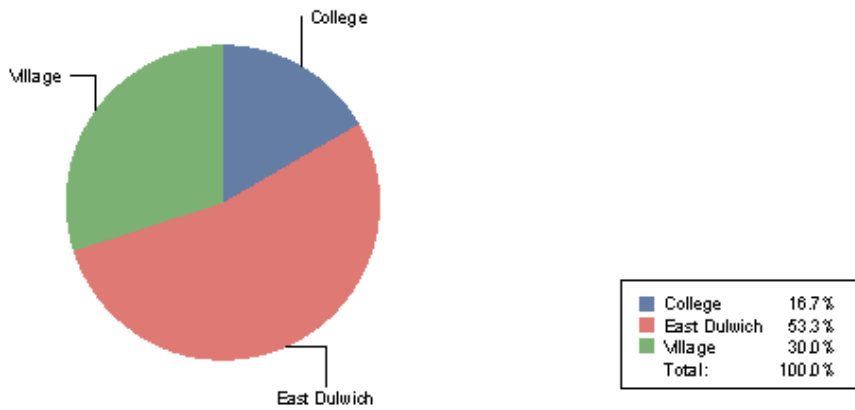
Totals by Ward

	2011	Total
College	5	5
East Dulwich	16	16
Village	9	9
Total	30	30

Totals by Community Council

	2011	Total
<b>Dulwich</b>	30	30
Total	30	30

Percentages by Ward



## APPENDIX 5

### Enforcement Investigations closed between 01/04/2011 and 31/08/2011

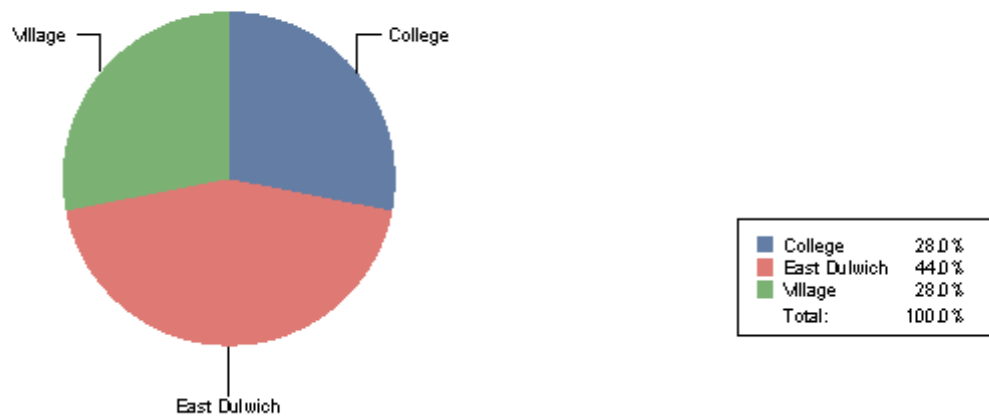
#### Summary totals by Ward

	BC	BI	BR	M	NB	Total
College	2	1	0	1	3	7
East Dulwich	3	1	1	0	6	11
Village	0	0	2	1	4	7
Total	5	2	3	2	13	25

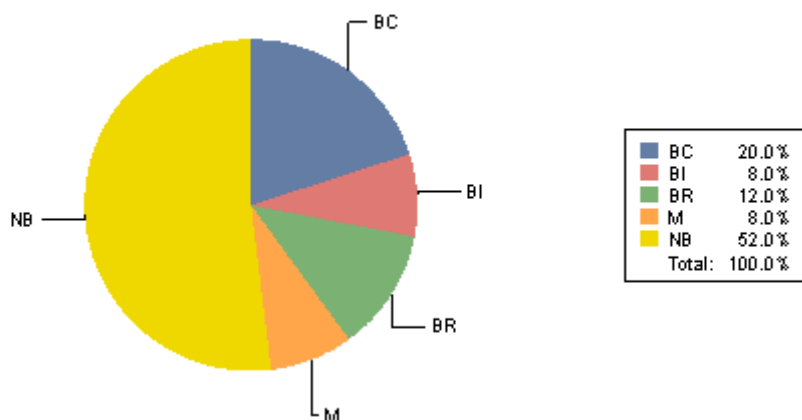
#### Summary totals by Community Council

	BC	BI	BR	M	NB	Total
DULW	5	2	3	2	13	25
Total	5	2	3	2	13	25

#### Ward percentages



#### Percentages of reasons for closure



NB = No breach of planning control. BC = Breach has ceased. BI = Breach immune from action. BR = Breach regularised  
 NE = Breach of control but not expedient to take action. M= Miscellaneous

## APPENDIX 6

### Open Enforcement Investigations, received between 01/01/2009 and 31/08/2011

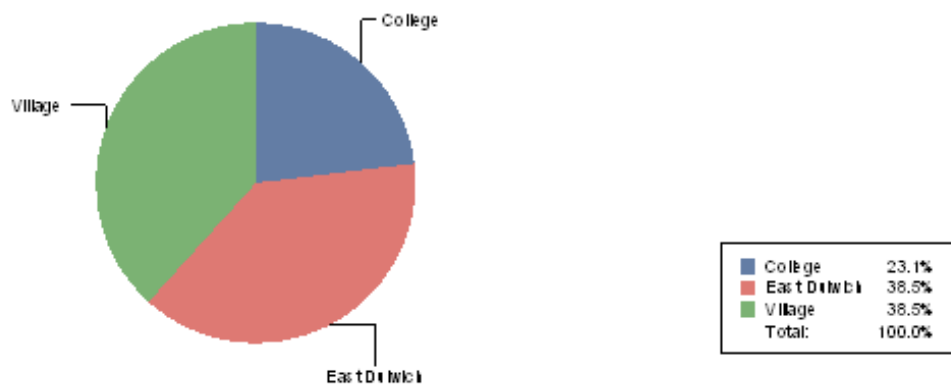
#### Totals by Ward

	2009	2010	2011	Total
College	4	0	2	6
East Dulwich	0	3	7	10
Village	2	3	5	10
Total	6	6	14	26

#### Totals by Community Council

	2009	2010	2011	Total
Dulwich	6	6	14	26
Total	6	6	14	26

#### Percentages by Ward



Enforcement investigations closed in the period 01/04/2011 to 31/08/2011

Community Council	Total	Total in target	% in target
Bermondsey	38	22	58
Borough and Bankside	28	17	61
Camberwell	29	18	62
<b>Dulwich</b>	<b>25</b>	<b>16</b>	<b>64</b>
Nunhead and Peckham Rye	34	22	65
Peckham	6	3	50
Rotherhithe	9	7	78
Walworth	29	15	52
<b>Grand totals</b>	<b>198</b>	<b>120</b>	<b>60.61</b>

