

Item No.	Classification: Open	Date: 7 December 2016	Decision Taker: Cabinet Member for Regeneration and New Homes
Report title:		Planning Enforcement Plan	
Ward(s) or groups affected:		All	
From:		Director of Planning	

RECOMMENDATIONS

That the Cabinet Member for Regeneration and New Homes:

1. Notes the Planning Enforcement Plan which sets priorities for action against unauthorised development and provides information for those affected by investigations.
2. Agrees to publicise the Planning Enforcement Plan on the council website.
3. Authorises the use of Fixed Penalty Notices in respect of unauthorised advertisements in the borough.

BACKGROUND INFORMATION

Enforcement Plan

4. A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 as:
 - The carrying out of development without the required planning permission; or
 - Failing to comply with any condition or limitation subject to which planning permission has been granted.
5. Contraventions of permitted development rights arising from the Town and Country Planning (General Permitted Development) (England) Order 2015 also constitutes a breach of planning control against which enforcement action may be taken.
6. Around 500 reports of potentially unauthorised development are received each year and these require investigation. The majority of requests for investigation arise via a report from a member of the public although some monitoring activities also reveal cases for investigation.
7. Local planning authorities have discretion to take enforcement action. The National Planning Policy Framework states at paragraph 207:

- Effective enforcement is important as a means of maintaining public confidence in the planning system. Local planning authorities should act proportionately in responding to suspected breaches of planning control.
8. The test is one of expediency having regard to the planning harm arising, the development plan and any other material considerations. Where a Planning Enforcement Plan is in place, this is a material planning consideration that can be taken into account.
 9. Most planning enforcement investigations do not lead to enforcement action. The service of a formal notice would be end of a process where an informal resolution has not been achieved.

KEY ISSUES FOR CONSIDERATION

10. The National Planning Policy Guidance sets out four reasons why local enforcement plans are important:
 - Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances
 - Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action
 - Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers
 - Provides greater certainty for all parties engaged in the development process.
11. The attached planning enforcement plan (Appendix 1) sets out 3 key priorities where enforcement action will be targeted:
 - Protection of housing
 - Protection against loss of amenity
 - Ensuring the benefits of planning obligations secured via applications are delivered.
12. These priorities reflect the council's fairer future promises.
13. The planning enforcement plan sets out the service that those reporting potentially unauthorised development can expect, with targets for decision making and an explanation of the various types of action that can be taken.
14. It also explains what happens and potential consequences for those whose properties are subject to an enforcement investigation.
15. Planning enforcement action is a protracted and complicated process that can ultimately lead to a criminal conviction. In the majority of investigations, the parties involved are not planning professionals and can find the process difficult to navigate. The Planning Enforcement Plan aims to explain in clear language the circumstances in which a formal action will be pursued, how a planning breach should be remedied, time periods involved and follow up actions.

CONSULTATION

16. There are no legislative requirements for consultation regarding a Planning Enforcement Plan. Service heads within the council have been consulted and their comments incorporated. It does not form part of the development plan for Southwark. It is a working document setting out the type of planning breaches that it is important to tackle and a practical guide to the planning enforcement process. It illustrates what types of planning enforcement actions are effective to tackle environmental harm. It sets the enforcement process within the development management framework. Once agreed, it is considered that publicity on the council's website is appropriate.

Background legislation: Fixed Penalty Notices

27. Fixed Penalty Notices (FPNs) are an enforcement method available across the United Kingdom and are payable for a range of offences, including moving traffic offences, such as speeding and driving through red lights, as well as. A FPN is a fine issued by the Council whereby the recipient can either pay a fixed penalty or deny guilt and be summoned to court.
28. The council already issues FPNs in respect of road network offences mainly committed by utility companies and dog fouling offences to those who fail to clean up after their dog. The report recommends extending the use of FPN to cover unauthorised advertisements.
29. The council is entitled to serve FPNs in respect of unlawful advertisements pursuant to Section 15 and 16 and Schedule 2 of the London Local Authorities Act 2004 (LLAA 2004) and Section 224(3) of the Town and Country Planning Act 1990.
30. Section 15 of the LLAA 2004 provides that *'where on any occasion an authorised officer of a borough council finds a person who he has reason to believe has on that occasion committed, in the area of that council, an offence under (a) any of the enactments mentioned in columns (1) and (2) of the table set out in Schedule 2 to this Act and described in column (3) of that table (Appendix 2)... The officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.'*
31. Section 16 provides that where a person is given a fixed penalty notice in respect of an offence, no proceedings shall be instituted for that offence before the expiration of 14 days following the date of the notice; and that such a person shall not be convicted of an offence if he pays the fixed penalty before the expiration of that period.
32. A fixed penalty notice must:
 1. set out the advertisement to which it relates and why that advertisement is unlawful
 2. state the period during which proceedings will not be taken for the offence, that is to say the period in which the recipient has to pay the fine or appeal service of the notice
 3. confirm the amount of the fixed penalty and the name of the person to whom and the address at which the fixed penalty may be paid.

33. An example of the FPN that the council intends to use is contained at Appendix 3. This may vary from time to time in accordance with the form of the notice prescribed by the Secretary of State.

FPN amount

34. The level of the fixed penalty has been set by the London Councils' Transport and Environment Committee (TEC). TEC is a statutory committee and comprises one representative from every borough council and the City of London, usually the Environment or Transport Portfolio holder, as well as a representative of Transport for London. It alone has the powers to set penalty levels for the offences where the joint committee is required by law to set penalty levels. Before it sets a penalty level, TEC undertakes public consultation, inviting views from boroughs, members of the public and relevant stakeholders depending on the office. In relation to advertisements, the level of the FPN has been set at £100 if paid within 28 days and £60 if paid within 14 days. Whilst the FPN is low, it is considered that it will act as a significant incentive to ensure unlawful advertisements are removed in a timely manner

Finance

35. The council is required to keep an account of their income and expenditure in respect of the administration and enforcement of FPNs. Each notice will have a case number on the planning database and a cash office number will be set up to receive payments within the planning cost code. A receipt for each payment will be generated. A monthly report will be generated to identify outstanding notices. At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and any surplus shall be applied to purposes connected with the improvement of the amenity of the area of the council or any part of that area. If the council so determine, any amount not applied in any financial year instead of being or remaining so appropriated, may be carried forward in the account kept to the next financial year. It is anticipated that no more than about £2,000 will be collected from these particular fixed penalty notice payments. The cost of monitoring and administering the scheme will exceed the income generated. A surplus is not anticipated. Any deficit will be modest and will be covered by the existing planning budget as part of the planning enforcement function. Existing resources will be used to issue and monitor fixed penalty notices. It is anticipated that the scheme will be cost neutral.
36. The council is required, after each financial year, to report to the Secretary of State on any action taken by it in respect of any deficit or surplus in its account for the year.
37. This requirement will be managed and overseen by the Director of Planning. Comments from the Director of Finance are contained at paragraphs 31-33 below.

Displaying advertisement in contravention of regulations

38. As set out above, FPNs can be used to deal with various environmental offences. In this case, the council would like the ability to serve FPNs in relation to the display of advertisement in contravention of Section 224 (3) of the Town and Country Planning (Control over Advertisements) (England) Regulations

2007 (the Regulations). This is specifically permitted in Schedule 2 of the London Local Authorities Act 2004.

39. Section 224 (3) provides that *'...if any person displays an advertisement in contravention of the regulations he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed, not exceeding level 4 on the standard scale (currently £2,500) and, in the case of a continuing offence, one-tenth of level 4 on the standard scale for each day during which the offence continues after conviction.'*
40. A person shall be deemed to display an advertisement for the purposes of subsection 3 if he is the owner or occupier of the land on which the advertisement is displayed or the advertisement gives publicity to his goods, trade, business or other concerns. A person shall not be guilty of an offence if he can prove that the advertisement was displayed without his knowledge; or he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.
41. By way of a practical example, the council believe the use of FPNs will be particularly useful in relation to the display of estate agency boards. The Regulations permit the display of such boards providing that they are, amongst other conditions, removed within 14 days after the completion of a sale or the grant of a tenancy.
42. The prolonged display of estate agent boards is considered to have a detrimental impact on the amenity and character of an area, resulting in street clutter and a sense of transience within a neighbourhood. This year the planning department has received 16 complaints of unauthorised advertising including estate agent boards. In 2013/14 Trading Standards Officers monitored over a hundred estate agent boards to see if they were retained after properties had been let or sold. They concluded that potentially a quarter of estate agent boards maybe unauthorised.
43. Until now the council has responded to individual cases relating to estate agency boards with varying degrees of success. However, seeking a formal remedy through enforcement procedures can be a lengthy and expensive process. The FPN process offers a swift remedy, resulting in a fine, if the sign is not removed.
44. Implementing the FPN procedure has been identified as a priority for the enforcement service in the Divisional business plan.

Procedure for issuing an FPN

45. Section 15 of the LLAA 2004 provides that an authorised officer of the council may issue a fixed penalty notice. The council will maintain a list of those approved by the Director of Planning to issue a notice.
46. In order to ensure the FPNs are issued fairly and dealt with in an appropriate manner, the council intend to follow a Code of Practice. A copy of the draft Code of Practice, which shall be approved by the Director of Planning, is contained at appendix 4. This Code of Practice shall set out the circumstances in which the council will issue a FPN, the steps that officers will be expected to take and the appeal process.

47. It is anticipated that the investigation of unauthorised advertisements will be the same as for other types of planning enforcement cases and will involve a planning enforcement officer visiting the subject property, and recording the presence of unauthorised adverts. If the advertisement does not concern an estate agents notice board a warning letter will then be sent requiring the advertisement to be removed. A general initial letter of warning will be sent to estate agents known to be operating in Southwark, warning of the need to comply with the Regulations and the potential for FPN's to be issued without further notice in respect of boards that do not comply.
48. Estate agent boards not connected to the property being let or sold are unauthorised and will be potentially subject to a fixed penalty notice being issued straightaway.
49. If the advert is being displayed in breach of the regulations, the site will be re-inspected and if the advert remains in place, a report recording why an FPN should be issued will be prepared.
50. The council will publish details of the FPN scheme on its website and write to estate agents that they are aware of operating within the borough to provide advance notice of the intention to use this power in 2017.

Appeal

51. A recipient of a FPN will be entitled to ask for the notice to be reviewed. The review will be carried out by the Head of Planning, Team Manager or a similar person acting in their place. The reviewing officer will always be different to the issuing officer. Furthermore, if a recipient disagrees with the service of a notice they may refuse to pay. In such a case, the council would then have the option of prosecuting the offender within the Magistrates Court pursuant to Section 224 (3) of the Town and Country Planning (Control over Advertisements) (England) Regulations 2007 (the Regulations).

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

52. The Cabinet Member for Regeneration and New Homes is being asked to:
 - Approve the adoption and publication of the Planning Enforcement Plan
 - Authorise the use of FPNs in respect of unauthorised advertisements in the borough.
53. The Equality Act 2010 introduced the public sector equality duty, which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not.
54. The Human Rights Act 1998 imposed a duty on the council as a public authority to apply the European Convention on Human Rights; as a result the Council

must not act in a way which is incompatible with these rights. The most important rights for enforcement are Article 8 (respect for homes); Article 6 (natural justice) and Article 1 of the First Protocol (peaceful enjoyment of property).

55. The council does not anticipate that either the adoption of the Planning Enforcement Plan or the use of FPNs will adversely affect those with a protected characteristic or to breach a human right. Councils are recommended to have an enforcement plan in national guidance. The ability to serve a FPN is specifically permitted by statute and is intended, in relation to unlawful advertisements, to protect the character and amenity of the area.
56. The council's Constitution provides that the Cabinet Member for Regeneration and New Homes has responsibility for, amongst other things, regeneration within the borough, planning policy, improvements in planning performance and high street planning. Part 3D of the council's Constitution provides that each Cabinet Member shall be responsible for the agreement of statutory and other strategies in relation to their area of responsibility. It is therefore considered appropriate for the Cabinet Member for Regeneration and New Homes to approve the use of fixed penalty notices in relation to unauthorised advertisements within the borough. Approving the Planning Enforcement Plan also falls within the relevant part of the constitution.

Strategic Director of Finance and Governance

57. This report is requesting the cabinet Member for Regeneration and New Homes to note the Planning Enforcement Plan which sets priorities for action against unauthorised development and provides information for those affected by investigations and to also to agree to publicise the Planning Enforcement Plan on the council website.
58. The strategic director of finance and governance notes that there are no financial implications arising from this as maintaining the council's planning enforcement function will be contained within existing departmental revenue budgets.
59. This report is also requesting the Cabinet Member for Regeneration and New Homes to authorise the use of fixed penalty notices in respect of unauthorised advertisements in the borough.
60. Details of the financial implications relating to FPNs are included in the report and the strategic director of finance and governance notes that this is expected to be cost neutral.
61. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Planning enforcement plan	Tooley Street	Alison Brittain 0207 525 5427
Fixed Penalty Notices	Tooley Street	Gavin Blackburn 0207 525 7007

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning		
Report Author	Alison Brittain, Team Manager – Enforcement		
Version	Final		
Dated	7 December 2016		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law and Democracy	Yes	Yes	
Director of Finance and Governance	Yes	Yes	
Cabinet Member	Yes	Yes	
Date final report sent to Constitutional Team		7 December 2016	

APPENDICES

No.	Title
Appendix 1	Enforcement Plan
Appendix 2	Section 15 LLAA 2004
Appendix 3	Example of FPN
Appendix 4	Code of Practice
Appendix 5	Equalities impact assessment: Enforcement plan