

Item No.	Classification: Open	Date: 01/04/2010	Meeting Name: Dulwich Community Council
Report title:	PLANNING ENFORCEMENT UPDATE <u>Information Only</u>		
Ward(s) or groups affected:	Dulwich		
From:	Head of development management		

PURPOSE

1. This report is intended to provide members with a brief and informative insight into the performance of the planning enforcement service and the progress of some key cases over the period January 2010 to March 2010 within the Community Council area.
2. Please note that this report is for information purposes only. The determination of planning enforcement investigations and conduct of enforcement appeals is delegated to officers under the Southwark Constitution 2008. Part 3F Note (a). Members are advised that they do not have a decision making function in relation to Enforcement Cases. If there are any specific enforcement cases that members would like to be updated on at the next community council meeting please contact Dennis Sangweme in the planning enforcement team.

PERFORMANCE DATA

3. The table below shows performance in dealing with investigations and overall performance on cases received since from October 2009 to March 2010. There has been a slight increase in the number of enquiries over the reporting period compared to same period during the previous financial year including corresponding planning enforcement action.

	Previous Year 08/09	April-September 09	Oct' 09 to March '10	Total for 2009/2010
Cases Received	73	36	26	62
Cases Resolved	65	37	94	131
Live cases				52

4. Members might be aware of the recent scrutiny committee's recent review of the planning enforcement service within Southwark. A report of the findings is yet to be produced. Officers and members, among other issues, agreed the need to consistently use pre-emptive enforcement powers through temporary stop notices, stop notices and injunctions. The planned enforcement database and system updates (ACOLAID) will provide better monitoring of team performance by measuring the following targets:

- initial acknowledgement to all written complaints within 3 working days
- target decision date (8 weeks from reception date)
- target site visit (high priority - 1st contact/visit within 24 hours; medium priority - 1st contact/visit within - 5 days & low priority - 1st contact/visit within 10 days.
- target initial acknowledgement of complaint (within 3 days of receipt)
- target initial update (28 days from reception date)
- target action plan update (8 weeks from reception date): Where formal legal or enforcement action is taken, complainants will be notified simultaneously with the action, or at most within 3 working days following that action
- target for issuing enforcement notice (within 2 weeks of instructions to legal)
- target for issuing temporary stop notice (within 24 hours of instructions to legal).

5. The improved systems will allow future reports to be more detailed on planning enforcement performance.

ENFORCEMENT NOTICES SERVED

Address	Details of Breach & Notice Issued	Date Notice expires	Appeal filed	Further action needed
Land at ground floor of 75-77 Norwood Road shown edged red on the attached plan (the Land).	<p>Breach: Without planning permission, the change of use of the Land from a restaurant (within use class A3) to a night club (sui generis) (the Unauthorised Use).</p> <p>Requirements of Notice: Notice issued on 17/02/2010 to (i) cease the use of the Land as a nightclub; and (ii) remove from the Land all facilities in relation to its use as a night club within one month.</p>	22/04/2010	Information not available	Officers have already met proprietors of Hypnotic to discuss requirements of enforcement notice.
Land at ground floor of 49-51 Norwood Road shown edged red on the attached plan (the Land).	<p>Breach: Without planning permission, the change of use of the Land from a restaurant (within use class A3) to a night club (sui generis) (the Unauthorised Use).</p> <p>Requirements of Notice: Notice issued on 18/02/2010 to (i) cease the use of the Land as a nightclub; and (ii) remove from the Land all facilities in relation to its use as a night club within one month.</p>	22/04/2010	Appeal lodged	Officers have already met proprietors of Hypnotic to discuss requirements of enforcement notice.

APPEALS

268 UPLAND ROAD, LONDON SE22 0DN

6. Alleged breach (08-EN-0197): The conversion of the existing dwelling house into two self-contained flats without planning permission.
7. The issue of the enforcement notice was preceded by visits to the site by enforcement officers over several months, advising representatives of Northbrooke Limited (the owners of the site) by way of letter of the unauthorised nature of conversion works at 268 Upland Road, and of the need for planning permission.
8. The unauthorised development is detailed as the change of use of the Land from use as a single residential dwelling house (within use class C3) into 2 self-contained residential units (one 2 bedroom flat and one 3 bedroom flat) at first, and ground and first floor level.
9. The appellant, has appealed on grounds (b) and (d) of Section 174 (2) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
10. A Public Inquiry into the Appeal against the Council's Enforcement Notice will be held on the 28th of April, 2010 at the Council's offices at 160 Tooley Street, London SE1 2TZ between 10:00am and 5:00pm.
11. Notification letters regarding the appeal will be sent to affected residents this week.

THE WHITE GOTHIC HOUSE, UNDERHILL ROAD, LONDON SE22 0BU

12. **Alleged breach (04-EN-0033):** the construction of a building containing six residential flats within the curtilage of a Grade II listed building without the benefit of planning permission.
13. The planning history of this site is quite complex. Council has now served an Enforcement Notice requiring the demolition of the White Gothic House in its entirety. An Appeal in respect of the Notice, served on the 20th of January 2010, has been made by the appellant, Mr R Laxman. The appellant has appealed under grounds (a), (c), (d), (f) and (g) of Section 174 (2) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
14. Rule 6 statements have now been prepared by both the Council and the appellant. There has been some difficulty in trying to set a date for the Appeal due to unavailability of Counsel for both sides but suitable dates have now been agreed. Subject to the agreement by the planning inspectorate, a public inquiry into the Appeal is to be held on the 1st and 2nd of September 2010 at the Council's Offices located at 160 Tooley Street, London SE1 2TZ.



PROSECUTIONS

LISTED WALL at rear of 19 VILLAGE WAY, LONDON SE21

Alleged breach (04-EN-0077): listed wall in poor condition

15. As members are aware, the owner (Hausman Hughes Ltd) of this site has failed to comply with the Section 215 Notice issued by the Council directing the reinstatement of the listed wall, which has fallen into disrepair. A briefing meeting was held with members to discuss options available to the Council to repair the grade II listed wall at the above site. Officers have commenced prosecution proceedings against the owners of the site for failing to comply with a s215 notice. It was felt that a prosecution will allow the s215 to be scrutinised in the courts and strengthen the Council's position in the event of direct action for the works in default to rebuild the wall.
16. The case was initially heard at Camberwell Green Magistrate's Court and was subsequently adjourned until May 2010 to allow Hausman Hughes Ltd time to comply with the notice. Hausman Hughes Ltd now has until the 4th of May 2010 to comply with the Notice. If compliance is not achieved by this time, prosecution for the offence of non-compliance with the Section 215 Notice will commence at Tower Bridge Magistrate's Court on the 21st of May 2010. Officers will contact the Court on the 4th of May to advise if the Hearing date is still necessary.
17. Since the first hearing on the 22nd of January 2010, works have progressed on site. The dilapidated section of the wall has been dismantled, original bricks have been cleaned and stored, new trenches have been excavated for footings of the new wall and the land is now looking tidier than it has for some years. A sample panel of replacement bricks has also been constructed on site. This sample panel is to remain in place until the works are complete and will serve as an example of the type of bricks, bonding, coursing and pointing to be used in the construction of the new wall.



CLOSED CASES

74 HINDMANS ROAD, LONDON SE22 9NG

Alleged Breach (09-EN-0346): The construction of a loft extension to the front and rear of the existing dwelling house.



Before

After

18. A complaint in respect of a loft extension at this address was received in September 2009. An inspection of the site revealed that a dormer extension had been constructed by Premier Lofts for their clients at 74 Hindmans Road, London SE22 9NG. It was explained to both the freeholders and representatives of Premier Lofts that the dormer was not permitted development due to its dimensions and that, given its appearance and effect on the streetscene, the Council would be unlikely to grant planning permission for such an extension.

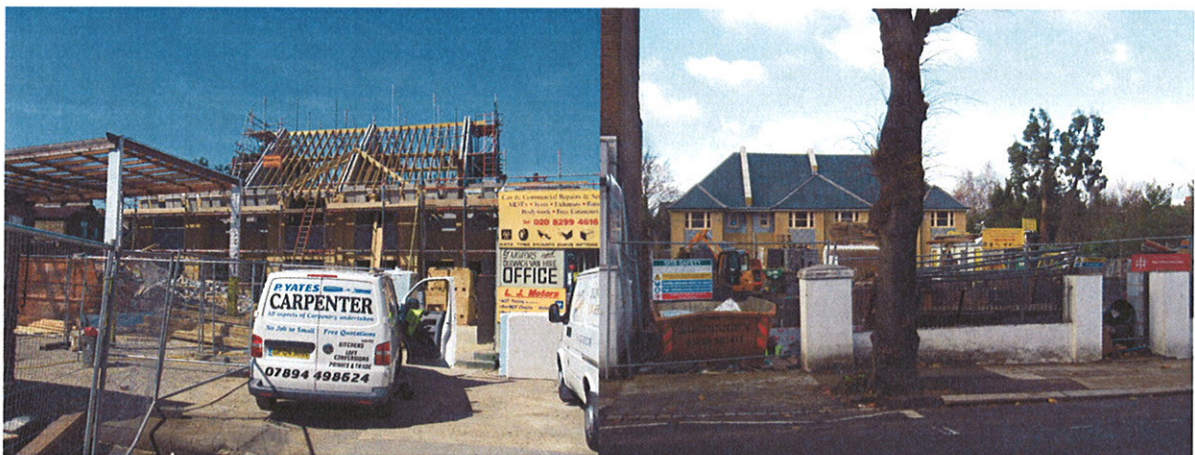
19. Officers were able to negotiate with Premier Lofts directly and a course of works were agreed to alter the extension to bring it into compliance with permitted development conditions for Class B and Class C of the Town & Country Planning (General Permitted Development) (Amendment) (England) (No.2) Order 2008. This was achieved without the need for formal enforcement action.

38-40 BARRY ROAD, LONDON SE22 0HR

Alleged breach (09-EN-0288 & 09-EN-0514): roof to Mews development higher than approved and the operation of a van hire business from the site.

20. Officers were initially requested to visit this site in August 2009 due to concern over the distance of the Mews building to the rear boundary with buildings on Upland Road. While the building was found to be compliant in terms of its footprint, it was also discovered that the timber framed roof that was under construction at the time was approximately 620mm higher than approved. This additional height was attributed to the steeper roof pitch of 40 degrees. As the developer wished to use slate tiles rather than artificial slates, a higher pitch was required to accommodate the additional weight of these tiles.

21. A planning application was therefore submitted seeking to regularise this breach of planning control. The application, referenced as 09-AP-2256 was later approved on the 1st of March 2010.



22. Members also later reported in December 2009 that Dulwich Van Hire was still operating their van hire business from the site. This use should have ceased when implementation of the extant planning permission at the site commenced. After bringing this to the attention of Dulwich Van Hire, arrangements were made to move the business from the site to an appropriate location and this in turn brought about the cessation of the use at 38 Barry Road without the need for formal enforcement action.

10 HALF MOON LANE, LONDON SE24 9HU

Alleged breach (09-EN-0171): The installation of a notice board on the forecourt on the premises without listed building consent

23. A notice board was installed in the forecourt of the Grade II Listed Half Moon Public House at 10 Half Moon Lane, London SE24 9HU in April 2009. The installation of such a notice board requires listed building consent and a search of Council's planning records revealed that consent had neither been applied for, nor granted. The freeholder was made aware of this breach of planning control and an application was soon made seeking the retention of the notice board. The application, referenced as 09-AP-1243, was later refused on the 25th of August 2009 as the notice board was considered to be too large. A further application was then made seeking listed building consent for a smaller notice board and this second application was approved on the 24th of November 2009.
24. While the approved smaller notice board has not yet been installed, the old notice board has now been removed from the site. The removal of the sign was negotiated without the need for formal enforcement action.



OTHER MATTERS

Changes to Planning Regulations Relating to Houses in Multiple Occupation (HMOs).

25. Legislative changes come into effect on 6th April. The statutory instrument for the change to the Use Classes Order (UCO) is on the OPSI website at http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100653_en.pdf . This adds a new use class C4 for Houses in Multiple Occupation. This change to the UCO relies, for interpretation, on the meaning of "house in multiple occupation" to the definition in the Housing Act 2004. I attach an extract of the relevant sections of that Act for your information, S.254 and S.258 are of particular reference.
26. The rationale behind this is set out in the CLGs summary of response to their 2009 consultation on HMOs at <http://www.communities.gov.uk/publications/planningandbuilding/housesmultipleresponses>
27. This change to the UCO has also resulted in a change to the General Permitted Development Order (GPDO) so that a an HMO can change to an "ordinary" dwellinghouse without the need for an application for planning permission. The statutory instrument for this is at

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100654_en.pdf . This part about HMOs is on page 6 under the heading "Class I. This SI also includes other changes to the GPDO increasing existing permitted development rights for industrial and warehouse premises and for schools, colleges, universities and hospitals and by introducing permitted development rights for minor extensions and other minor works to office buildings and shops, catering, financial and professional services premises.

28. Several discussions over the past month on the implications of the proposed amendment to the use class order in terms of:

- a possible increase in the number of applications seeking planning permission or certificates of lawful development for use as HMOs under the new use class;
- whether there are adequate development plan policies to allow effective decision making;
- an increase in the number of possible enforcement investigations;
- resource implications.

29. Officers understand that the government's intention in bringing about this change is to regulate houses in multiple occupation (HMOs). Currently up to 6 unrelated people can occupy a single dwelling as a household without the need for planning permission. The current legislation allows, for example, a group of up to 6 students to occupy a single dwelling without the local authority having any control over the uses. In larger university towns this so called studentification has caused problems during peak term times including parking, noise and litter, and conversely outside of term time the decline in population has led to the loss of facilities serving the local community. Some south coast towns have experienced growth in HMOs accommodating migrant workers and their families. Southwark has a large concentration of dwellings occupied by up to 6 people living together as a household especially in SE16, SE15, SE17, SE5 and to a lesser extent, some sections within SE1.

30. The proposal to amend the threshold in the UCO to refer to not more than 3 people living together as a single household (currently 6 people) and create a new HMO use class was chosen from a number of options after a consultation process. It appears the proposed option was favoured by the RTPI and Planning Officers Association (POS). The UCO does not state the number of persons living together as a single household in a dwelling for it to be considered an HMO to be 3 or more although this figure was mentioned in CLG's summary to the responses to their consultation on this subject. The UCO says that a single household is as defined in S.258 the Housing Act 2004 and this does not set a numerical threshold. S.258 says that persons are not forming a single household unless they are all members of the same family or they are in a description of a group of persons made by regulations for the purpose of being regarded as a single household.

31. So the definition basically comes down to whether or not persons are members of the "same family". S.258 then goes on to define which persons constitute the "same family". This covers couples, again separately defined, and relatives, also

separately defined. So, our reading of this is that even two persons sharing a house or flat would be an HMO use if they are not a couple and are not related.

32. However, all this is further complicated by the "tests" set out in S.254 of the Act. Sub-section (1) of this section seems to imply (by virtue of the word "or" between sub-paras (d) and (e)) that just one of sub-paras (a) to (e) has to be met for a building to be an HMO but that if testing against sub-para (a), the "standard test", which is itself then defined in sub-section (2), all of the criteria in sub-paras (a) to (f) of sub-section (2) have to be met by virtue of the word "and" between sub-paras (e) and (f). Officers will seek legal opinion on the interpretation and application of the sub-paras of these sub-sections.
33. There have been, no doubt, ongoing extensive discussions on the implications of the proposed changes. Many organisations consider that any additional legislative burden is unnecessary and is a 'hammer to crack a nut'. The British Property Federation (BPF) has branded the proposals a 'nimbies charter'. It is however evident that the proliferation of groups such as students in high concentrations can have a negative impact upon an area. Whilst market forces may eventually generate sufficient purpose built halls of residence for students this is unlikely to be achieved in the short or medium term. Whilst in certain parts of the country greater control would be beneficial, it is also true that the changes could potentially undesirably impact upon other uses such as small scale care homes (care in the community).
34. Enquiries on possible unauthorised HMOs to the Council have in the past been received mainly from residents and in some cases the Council's own housing enforcement team. The main concern from local residents is not necessarily a problem with people sharing a house, but serious concerns about streets where most of the houses are in shared occupation. Few people live in HMOs or shared accommodation for very long, so what this means is a constantly changing population. Constant change breaks the links on which communities depend. It is generally agreed that as HMOs/shared occupancy increase, community spirit decreases. There are some streets in Southwark where temporary tenants outnumber longer term residents. The results are all too obvious in the changes that have overtaken these neighbourhoods in the last decade.
35. It appears most flat/house shares will be caught by that new definition as well as student accommodation and other special needs housing that have previously housed up to six un-related tenants (Class C3 has been revised to specifically include those dwellings where not more than six residents are living together as a single household where care is provided for them. This seems to take these outside of the HMO use class). There will no doubt be interesting tests as to what the definition of "related" is. The actual implementation and interpretation of the new regulations is likely to be initially fraught with many practical difficulties.
36. The duty planning service is already receiving enquiries from landlords seeking to confirm their position, however until the new regimes comes into force in April, it is not clear what the new use class will fully provide for and what guidance will be available for local planning authorities to interpret and implement the additional controls.
37. The following steps are proposed in the interim:

- review all cases of shared accommodation investigated by planning enforcement within the past 10 years to assess the implications of the new legislation;
- review whether current development policies allow for effective decision making on the new use class;
- once the new regime comes into effect, post some guidance on the Southwark website;
- standardise responses to enquiries by landlords and local residents. Where landlords are in doubt, encourage submission of applications for either full planning permission or certificates of lawful development;
- in terms of resource implications, there are no planned increase in staffing, the emphasis being to continue to do more with available resources;
- the planning enforcement and housing enforcement teams will work closely together in implementing the proposed changes;
- discussions with colleagues in Housing enforcement suggests that they welcome the change in definition of HMOs as it removes previous inconsistencies on this matter between planning and housing acts.

38. Housing Enforcement had the following specific observations to the proposed changes:

- From our view point the current difference between the planning act and housing act definitions of what is a HMO has caused confusion with landlords (e.g. planners still have properties which they call shared houses which to them are not HMOs but to us are HMOs.) Landlords often claim that because planning doesn't class the property as a HMO then we cannot either. The proposed change in definition will bring both definitions closer together making the enforcement process a lot easier and less confusing for landlords.
- Identifying and defining HMOs is notoriously difficult, particularly shared houses or houses with multiple "lodgers". The proposal will therefore assist councils in doing this.
- There has been a dramatic increase in poor standard HMOs being created in the last few years, (the 2009 House Condition Survey confirms this) therefore some control and or disincentive might not be a bad thing. Plus the changes aren't retrospective so there is unlikely to be a sudden decrease. Further the hurdle might serve to filter those who really want to be HMO landlords as opposed to the more opportunistic amateur landlord.
- If the potential landlords are known to us via the planning process, we (EHTS) can help to advise and assist the landlord to comply with HMO legislation from the outset. Traditionally amateur landlords don't prioritise their spending on work that will actually bring about compliance, because they are completely unaware of matters such as fire safety, overcrowding legislation etc. Therefore the new process will lessen risks to potential tenants because we will have advanced notice of a potential change and can affect a suitable intervention at an earlier stage to ensure new HMOs meet the required safety standards.

- Many landlords already ignore the planning process when changing the use of a dwelling to a HMO therefore whether this benefit will be seen in practice is doubtful. In theory, in changing the planning class there will be greater powers to regulate new HMOs and any increased regulation of higher risk and hazardous accommodation is to be welcomed.
- Finally it might serve to encourage landlords to convert houses into self contained/studio flats which provide much better accommodation.

39. The proposed changes, no doubt spells busy times for the relevant Council enforcement units.

Joined Up Working

40. The other main issue raised during the scrutiny committee's review of planning enforcement was the need for more effective joined up working between planning enforcement and other relevant Council units, external organisations and residents.

41. Members expressed their interest in seeing stronger joined up working relationships involving planning enforcement. To this end, officers are in the process of arranging, to start with, an officer exchange with the environmental and housing department which has the following teams (among others): food safety, trading standards, licensing, environmental protection, health and safety, housing enforcement, community wardens, waste and litter. Planning enforcement officers are not all too familiar with the responsibilities of the various teams within environmental protection and housing and the relevant contact officers within these teams and vice versa.

42. The officer exchange will provide an opportunity to develop more effective ways of joined up works through (i) establishing what each team does (ii) the relevant contacts within each team (iii) identifying areas of joined up working and information sharing with planning enforcement and (iv) possible joint events/meetings, etc.

CONCLUSION

43. Officers hope that members find this report informative and welcome comments to improve format and content of the report to meet expectations. It is hoped that subsequent reports will provide more details on the performance of the enforcement team on agreed performance indicators and where possible broken down to ward level.

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