

**Cllr. Nilgun Canver
Cabinet Member for Enforcement and Safer Communities
HMO (Houses in Multiple Occupation) – Facts**

Planning Enforcement Improvements

Last year I commissioned a review of our Planning Enforcement service and as a direct result we have now put in place improvements specifically to address concerns over the stability of our workforce, how quickly cases are resolved and how well we communicate what can be enforced. Importantly this review found that Haringey is already more active than its neighbouring boroughs in using enforcement powers to reverse developments.

As a result of this work, case management levels have fallen from more than 2,700 open cases in 2004 to less than 500 in 2008 and we are now able to report significant improvements in the quality and timeliness of our work.

Planning Enforcement Performance

- 91% of all new cases are acknowledged within 3 days
- 100% of all new cases are being visited within their priority target time.
- 48% are resolved successfully after 8 weeks
- 92% of all new cases are now being closed within 6 months of a case being opened.

In the 12 months from January 08 to December 08 the service has -

- Served 95 Enforcement Notices (8 were withdrawn)
- Initiated prosecution for 52 offences relating to breach of an Enforcement Notice.

Planning Enforcement Activity - HMO/flat Conversion in Harringay Ladder Roads

Since 2005 we have kept a tracker on all planning enforcement cases investigated on Ladder Roads. Most of these addresses were identified by complaint and survey through the LCSP.

A total of 215 cases have been investigated

Of these 215

- 185 are closed.
- 114 were closed with no breach
- 59 were closed under the 4 / 10 year rule,
- 6 have been granted retrospective planning permission.
- 13 properties have been reverted back to original use through officer negotiation or after legal action.

Of the open cases:

- 8 cases are under investigation or negotiation.
- 8 are in various stages of legal action
- 2 properties have been served Enforcement Notices which have not yet reached their compliance dates.
- 4 properties where enforcement notices have been served have appealed these notices.

Planning Enforcement Definitions and Powers

HMO Definitions

- House in Multiple Occupation - will be an unconverted house in which more than 6 people share communal facilities such as living rooms kitchens etc. These are distinct from a family house insofar as its occupants are not related to one another.

Immunity from enforcement occurs after 10 years from use as a HMO

- Flat Conversion or conversion into multiple dwellings – will be a house is that is converted into self-contained residential units. These will have their own w/c bathroom kitchen and living accommodation and usually there will be no communal area within the premises all being self-contained within individual residential units. These units are subject to their own Council tax bands. They are distinct from say bed-sits which may include cooking facilities and a washbasin and do not have full amenities for self-contained use.

Immunity from Enforcement Action occurs after 4 years from the date of conversion.

Enforcing against HMOs and Conversions

Unauthorised development or unauthorised change of use here is not illegal. There is no strict liability offence and we cannot prevent a conversion or change of use.

HMOs – No action can be taken until a property is occupied as a HMO. For HMO to be proven, it must be proven that more than 6 people reside at this property. This can be through tenancy agreements and housing benefit records if applicable as well as through site visits. Other services, such as private sector housing may have records indicating that this is a breach of planning.

Where a HMO exists (i.e. is occupied) and can be proven, we can serve an Enforcement Notice that requires it to be reversed. Compliance would only require the numbers of occupiers to change and therefore the Notice can be complied with simply by less than 7 people occupying the property. Enforcement action is difficult to sustain on appeal for marginal cases.

Conversions - No action can be taken until the property is converted into self-contained flats. We cannot prevent the installation of amenities such as additional sinks, even though it may be an indication that a conversion is taking place.

Planning Enforcement Powers

Planning law and guidance is geared towards the remediation through grant of planning permission in the first instance with a right to appeal against a refusal. The use of Enforcement Notices with punitive measures such as applications for Injunctions been seen as very much a last resort.

When investigating we will usually serve a Planning Contravention Notice which requires the interested parties to tell us what is happening in a property, this can result in co-operation from landlords and can avert conversions or facilitate early intervention.

Where a conversion has been developed we can serve an Enforcement Notice to require its reversal. This will provide a period of time before the notice comes into effect and a further period for compliance. This period needs to ensure that where tenants are affected an appropriate period is allowed so that statutory tenancy rights are not affected. This is inevitably time consuming and considerable leeway needs to be given in terms of timescales often to ensure compliance with the Notice. During this time a landlord will be able to derive a financial advantage from the unauthorised development.

Prosecution can only be taken where a Notice is not complied with, and it will not itself result in compliance, although a Court summons is usually the stage at which landlords will consider compliance.

There are very limited powers to prevent HMO usage or conversion without approval.

Preventative Injunctions can be used to prevent a planning breach, but these are expensive and we would have to prove how likely it is that this will happen.

A Temporary Injunction can sometimes be granted where the Court is not fully satisfied on the expediency to grant a full injunction and may therefore require the parties to return after a limited period of say 3 months to review the injunction. Sometimes an extension to this is allowed. Again it would have to be for a serious breach of planning control to be seriously considered.

Stop Notices can only be issued to prevent expected breaches of Planning Control where a breach has already occurred. In such instance this would be sub division into flats. Section 183(4) of the Town and Country Planning Act 1990 provides that a Stop Notice shall not prohibit the use of any building as a dwelling house. Only an injunction could potentially prevent conversion works altogether but carries uncertainty as outlined above.

Unauthorised flat conversions are rigorously pursued by the Council and account for approximately 60-65% of all Planning Enforcement Notices served. (156 year to date).

Approximately 75% of all prosecutions relate to flat conversions. Unfortunately it is only at this stage that compliance usually occurs. People also have a right to appeal at this point.

Certificates of Lawfulness

Applying for certificates of lawfulness is still seen as a way to avoid enforcement action. Under planning legislation, a Certificate of Lawfulness cannot be granted, and an application should not even be validated, where an Enforcement Notice is in existence.

Efforts are being made to ensure that applications are rigorously checked in terms of both their validity and strength of the evidence provided.

Private Sector Housing Standards and Licensing

Under the Housing Act, HMOs are any premises occupied by more than one household. Specifically houses occupied as HMOs which are 3 or more storeys, with 2 or more households are required to be licensed under a mandatory scheme operating since 2006. These properties require full inspection, detailed plans to present to the fire officer, specification of works and enforcement of conditions if required.

Where properties fall below standards for licensing these are now subject to interim and final management orders, where the authority takes over the management responsibility.

Housing Standards Enforcement

Enforcement powers can be used to achieve the following:

- Management regulations apply to HMO's which deal with a number of issues to protect the safety and comfort of the occupants. Controlling the waste from such properties is one of the requirements. Failure to meet the regulations is an immediate offence, although warnings are always given in most cases. It is a useful tool to focus a landlord as to their responsibilities.
- Space standards apply to the size of the rooms which will limit the number of occupants to the property, depending on the layout.
- Repairs and means of escape are dealt with under the Housing Health and Safety Rating System. In most cases the most appropriate course of action is to serve an improvement notice which will specify the works required. The notice is subject to an appeal period, and can be enforced by prosecution or work in default.
- There are other statutory powers other than the Housing Act which deals with such properties which can deal with pest issues, filthy conditions, rubbish accumulation and nuisance.

HMO and Conversions – Our next steps

Strategy

As a result of expressed community concerns a corporate HMO strategy group has been established. The strategy is under development and will be broadly based response to the issue and will recognise both the need for safe and decent housing of this type, but also be a response to the issues that can arise when it is poorly managed or where its development is inconsistent with our planning policies.

Two pilot areas have been agreed to test out approaches that we can take to address these issues and Harringay Green Lanes has been identified as one of these areas. Cllr. Gina Adamou chairs the pilot working group.

Within this area we will be looking at options for introducing a discretionary licensing scheme. If successful, this will provide additional powers to regulate the management and establishment of HMOs.

The planning service is reviewing the Planning policies and they will ensure that policies reflect the needs of the area. They will ensure that policies are clear and well understood.

The Planning service is also introducing more robust procedures to ensure that certificates of lawfulness are only awarded where there is convincing evidence to support applications made.

Lobbying Government

It is clear that the powers of planning enforcement are not sufficient. Powers to prevent HMOs and conversions are limited and the sanctions available do not sufficiently penalise deliberate unauthorised development.

I will be writing to the Secretary of State for Communities and Local Government and the Minister of State (Housing) requesting support for two changes to the planning system.

1. The introduction of a strict liability offence for unauthorised development – we believe that in circumstances where a developer converts a house into multiple occupation without seeking planning consent there should be an offence, without the need to serve an enforcement notice. Court should be able to take into account the derived benefit of such a development and the developer should not benefit from the proceeds of that crime. Persons convicted should be deemed to not be suitable persons for holding a HMO licence. It is recognised that there are difficulties proving a breach and that this proposal may be more effective for conversions of properties into self-contained residential units
2. There should be no restriction on the use of stop notices where residential accommodation is being created. A local authority should be able to issue a stop notice before a development is occupied in circumstances where that development is clearly contrary to local planning policy and where conversion work is clearly already underway