


<b>Cabinet</b>  20 March 2018	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Tower Hamlets Planning Compliance Policy</b>	

<b>Lead Member</b>	<b>Councillor Rachel Blake, Cabinet Member for Strategic Development &amp; Waste</b>
<b>Originating Officer(s)</b>	Desmond Adumekwe (Planning Compliance Manager) & Paul Buckenham (Development Manager)
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

## Executive Summary

Tower Hamlets is experiencing a period of significant growth and investment, with substantial change in the built environment ranging from small scale development by householders and local businesses, through to major development projects and regeneration initiatives.

The planning system plays a central role in managing development, through the assessment and determination of planning applications and the granting or refusing of planning permission. Ensuring compliance with approved plans and planning conditions, investigating reported breaches of planning control and the appropriate use of planning enforcement powers all contribute to an effective development management process.

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) set out the importance of effective planning enforcement how local planning authorities should use their discretionary enforcement powers. The NPPF says that Local Planning Authorities should prepare a Local Enforcement Plan, to explain how they will exercise their discretionary enforcement powers.

A recent restructure of the Planning and Building Control Service, established a Planning Compliance Team with a wider remit than the former Enforcement Team. A new manager is in post and the capacity of the team has been expanded following the approval of a Mayoral growth bid as part of the 2017/18 Council budget process.

In response to this, a draft Planning Compliance Policy is being prepared, which

will address the NPPG guidance, but go further than being solely an enforcement plan, by taking a more rounded approach to planning compliance issues, including a framework for taking forward proactive improvement projects.

The draft Planning Compliance Policy will set out the Council's approach to investigating and dealing with breaches of planning control, explain how decisions to take formal enforcement action will be made and set out the standards of service that members of the public will receive.

The Planning Compliance Policy has been informed by casework, comments received and an up-to-date evidence base. It is also drawn up in full consideration of the Tower Hamlets' Enforcement Policy adopted on 29<sup>th</sup> July 2010.

The report has undertaken a public consultation on those documents over a six week period ending 19<sup>th</sup> February 2018. This report seeks approval for adoption from the Mayoral Advisory Board in advance of formal adoption by Mayoral decision.

### **Recommendations:**

Post consultation the Mayor in Cabinet is recommended to:

- a) Consider this report and the draft Planning Compliance Policy attached at Appendix 1.
- b) Approve of the draft Planning Compliance Policy for adoption

## **1. REASONS FOR THE DECISIONS**

- 1.1 Powers to enforce planning controls are given by Parts VII and VIII of the Town and Country Planning Act 1990 (as amended). The power to take enforcement action is discretionary to the local planning authority.
- 1.2 With regard to enforcement action the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government guides local planning authorities in the following way:-

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”.*

## **2. ALTERNATIVE OPTIONS**

- 2.1 Continue working as is utilising existing national policy such as the National Planning Policy Framework and Planning Practice Guidance (‘Ensuring effective enforcement’).

## **3. DETAILS OF REPORT**

- 3.1 The document combines both the general strategic direction and the Tower Hamlets approach to the planning compliance regime in one document as per Government advice. It includes the legislative basis for such a policy and the local contextual factors that influence how the Council will deliver a compliance service. The Policy is set out in the form of an accessible document for members of the public to understand the level of service that they can expect from the Council. It covers an indefinite period from 2018 but will be reviewed periodically to take account of changes in local priorities and issues affecting the Borough.
- 3.2 The Planning Compliance Policy explains how members of the public can report possible breaches of planning control, how these will be investigated, how the progress of the investigation can be tracked and how feedback will be provided on the outcome and any actions that are agreed.
- 3.3 The document points out a number of goals for the policy relating it the public’s needs and expectations at every step.
- 3.4 The document also sets out the principles of making decisions to carry out formal planning enforcement and the tools that are available. This includes

guidance on how Tower Hamlets will apply the key aspects referred to in the NPPF and NPPG, when making these decisions:

- a proportional approach;
- the test of expediency;
- consistency of approach;
- transparency.

- 3.5 The main bulk of the document however puts into detail the Council's approach to using the enforcement tools available in order to resolve breaches (e.g. Enforcement Notices, Breach of Condition Notices and legal proceedings) and the types of scenario where these could be appropriate.
- 3.6 The Planning Compliance Policy also explains how the planning compliance regime works with other enforcement and compliance regimes. It sets out how it is intended to work in a cross-departmental manner and the sharing of information to provide a joined up approach to resolving planning and related issues.
- 3.7 The document also advises that there may be cases where it may not be possible to deal with the matters raised in the initial contact with the planning service, for example because the works or development that has taken place does not require planning permission or because the time allowed for taking formal action has expired.
- 3.8 Planning enforcement tools can be used proactively to deal with area based or topic based issues that help to deliver wider strategic objectives for the Council, irrespective of whether specific complaints have been received. For example the Council's Planning Compliance Team has led a project to enhance Brick Lane Town Centre by investigating and taking action against unlawful signs and advertisements. Projects are also underway to look at how the impacts of construction can be more proactively managed and to investigate incidents where access to the River Thames Walkway has been closed without the relevant consents. The Planning Compliance Policy will highlight this approach and set out the framework for identifying similar proactive projects in the future.

#### **4. PUBLIC CONSULTATION**

- 4.1 The consultation on the Planning Compliance Policy started on 8 January 2018 and ran for 6 weeks. The public consultation process closed on 19 February 2018. Public consultation was carried out in general conformity with the adopted Statement of Community Involvement (SCI).
- 4.2 The Planning Compliance Policy was published on the Council's website and residents and stakeholders were able to make comments on the document online, by email or by post.

- 4.3 The 6 week consultation was an opportunity for the public and stakeholders to influence the content of the policy. Views were sought on the Council's approach to planning compliance and whether the draft document has captured the issues that are of importance to local people.
- 4.4 A total of 218 individuals and organisations were notified of the consultation draft. This includes all Tower Hamlets Ward Councillors; local residents' and tenants' associations; local amenity societies; relevant national amenity societies; Historic England; Natural England; the Metropolitan Police; the London Fire Service; Transport for London and the regulatory services within the Council.
- 4.5 In response to the public consultation, the Council received comments from the Spitalfields' Neighbourhood Planning Forum, the Port of London Authority and Natural England. The Council's Legal Services Team has also been involved in the preparation of the draft Policy.
- 4.6 The table below summarises the issues raised and the proposed response:

Comments	Response / alteration
<p><i>Spitalfields Neighbourhood Planning Forum:</i></p> <ul style="list-style-type: none"> <li>• s.5.4 add "Unauthorised painting of buildings in conservation areas"</li> <li>• s.6.17 amend "in extreme cases such as demolition in a conservation area" insert the words "severe damage or" before demolition.</li> <li>• Also under Section 6 consider adding a section which would compel Remedial Work to be made to reverse unauthorised/incompliant works.</li> </ul>	<ul style="list-style-type: none"> <li>• The painting of buildings within a conservation area is permitted development (e.g. does not require planning permission (General Permitted Development Order 2015, Part 2, Class C) unless it is for the purpose of advertisement, announcement or direction. As such the Council cannot commit to taking enforcement action against the painting of a building in a conservation area unless it is listed, controlled by planning condition or exists as an advertisement, announcement or direction.</li> <li>• There is case law (<i>Shimizu (UK) Ltd v. Westminster City Council</i> 1997) that demolition of only part of a building not amounting to demolition of the whole or substantially the whole of the building is to be regarded as an alteration of the building rather than as demolition. However if this alteration does not constitute permitted development planning permission may be required and this may serve as an unauthorised breach of planning control. This will not however constitute a prosecutable offence. <b>The draft Compliance Policy will be updated to provide greater clarity on this point</b></li> <li>• Paragraph 6.18 explains the default</li> </ul>

	<p>powers which include the possibility of carrying out works in default and recovering all associated costs from the contravener.</p>
<p><i>Port of London Authority:</i></p> <p>The PLA support the aim of the planning compliance team to push forward more area or topic based pro-active projects, using enforcement tools to help deliver Council objectives. The PLA specifically welcome the reference to the statement in paragraph 10.5 that Tower Hamlets has flagged the following projects as priorities in the document.</p> <ul style="list-style-type: none"> <li>- Dealing with the impacts of construction and ensuring compliance with Construction Management Plans</li> <li>- Investigating closures and obstructions to parts of the Thames Path</li> </ul> <p>In regards to the reference to ensuring compliance with Construction Management Plans, The PLA would have a particular interest in schemes involving or promoting the use of the River Thames for the transportation of construction materials and waste, and ensuring this is implemented, which is supported by the PLAs Vision for the Tidal Thames (2016) which includes a specific goal encouraging the use of the River Thames for freight, rather than by road.</p>	<p>The Council will continue to ensure that all relevant parties, including the Port of London Authority, are consulted in the determination of planning decisions and with regard to any related pro-active projects. Should any breach of condition, particularly with regard to construction management plans, affect areas covered by the Port of London Authority, the Council will work closely with the body in order to resolve the matter as expeditiously as possible.</p>
<p><i>Natural England:</i></p> <p>Natural England does not consider that this Planning Compliance Policy poses any likely risk or opportunity in relation to our statutory purpose, and so does not wish to comment on this consultation.</p> <p>The lack of comment from Natural England should not be interpreted as a statement that there are no impacts on the natural environment. Other bodies and individuals may wish to make comments that might help the Local Planning Authority (LPA) to fully take account of any environmental risks and opportunities relating to this document.</p>	<p>The National Planning Policy Guidance states that local plans should include strategic policies for the conservation and enhancement of the natural environment, including landscape.</p> <p>The need to deliver growth sustainably across London is a pressing issue. This includes managing waste, reducing carbon emissions, mitigating flood risk and protecting biodiversity. Over the last 10 years the Borough's biodiversity has greatly improved. However increasing development and population puts pressure on other aspects of sustainability. There are 3 Local Nature Reserves and 46 Sites of Importance for Nature Conservation (SINC).</p> <p>In accordance with 2.6 of the Planning Compliance Policy the Council will continue to uphold the current and emerging Local Plan with regards to the policies within the</p>

	development plan's suite of policies and any other material planning considerations such as the London Plan and relevant national planning policy. This includes extant policies on open spaces, biodiversity and the general protection of our environment.
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- 4.8 Prior to formal adoption cosmetic changes will be made to the Policy including improvements to visual appearance, layout and illustrations showing examples of recent achievements.

## **5. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 5.1 Following the completion of the public consultation process, this report seeks the approval of the Mayor in Cabinet for the Tower Hamlets Planning Compliance Policy (Appendix 1) to be formally adopted.
- 5.2 The Council's planning compliance team was expanded in size following the inclusion of a Mayoral Priority growth bid of £151,000 within the 2017-18 budget process. This enhanced the capacity of the team to undertake enforcement and has enabled the draft Planning Compliance Policy to be developed.
- 5.3 The costs of the planning enforcement process, including the issuing of notices, are met from existing approved resources, however in certain cases the Council will pursue further enforcement action through the courts, incurring additional legal costs. These will be recovered if the Council is successful in the court case but the costs of unsuccessful prosecutions will fall on the Authority. Each potential court case is assessed on its likelihood of success in order to reduce the risk that the Council will incur unrecoverable costs. In certain cases, if a breach can be linked to criminal activity, the Council might be able to recover financial resources through the Proceeds of Crime Act 2002 (see paragraph 6.19 of the draft policy), although it is considered this will not be a common occurrence.
- 5.4 The costs of the public consultation process have been met from within existing budgetary provision.

## **6. LEGAL COMMENTS**

- 6.1 The report seeks the authority of Mayor in Cabinet to adopt this document: "Tower Hamlets Planning Compliance Policy". The document is not intended to be a Development Plan Document. The document sets out how the Council intends to exercise its planning enforcement function; to monitor and investigate alleged breaches of planning control; and to take action, when appropriate, in the public interest.

- 6.2 Planning compliance is discretionary and the Council is not bound to act in any particular case. Much will depend on acting reasonably, proportionately (in relation to the level of harm caused), whether it is expedient and in the public interest to act immediately and whether planning permission is likely to have been granted had an application been made. Whilst prosecution is an option open to the Council, it is rare to make an immediate intervention and in most cases the Council would wish to review all circumstances before agreeing the type of formal action it is expedient to take
- 6.3 The Council has a range of powers available to it to enforce breaches of planning legislation. Whilst the Council is not required to have a “Tower Hamlets Planning Compliance Policy”, it is good practice to do so. The exercise of compliance powers supplemented by policies and procedures that the Council has adopted helps to minimize the risk of Judicial Review and maladministration complaints and ensures that appropriate enforcement action is taken.
- 6.4 The Council does have an Enforcement Policy and this Planning Compliance Policy is supplemental to the overarching Enforcement Policy.
- 6.5 This report correctly identifies that there was no statutory requirement for the Council to consult on this policy. Having regard to the Council’s Common Law duty to consult, it was considered appropriate to do so and, such consultation followed the procedure set out in the Council’s Statement of Community Involvement for the making of a supplementary planning document as this was considered an appropriate comparison. The common law duty imposes a general duty of procedural fairness when exercising functions which affects the interests of individuals. This requires:
- (a) that the consultation be at a time when proposals are still at a formative stage and the proposals are still formative and which has happened in this case.
  - (b) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response formative and which has happened in this case.
  - (c) adequate time must be given for consideration and response formative and which has happened in this case.
  - (d) the product of consultation must be conscientiously taken into account and which is the purpose of this report
- 6.6 In considering the recommendations in this report, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty.



## **7. ONE TOWER HAMLETS CONSIDERATIONS**

- 7.1 One Tower Hamlets principles have been considered so far as they impact upon the adoption of the policy. The implications of adopting this policy on the protected characteristics outlined in the Equalities Act 2010 have been considered using the Council's Equality Analysis Quality Assurance Checklist and it has been considered that no further action needs to be taken at this stage.
- 7.2 Due regard for the nine protected groups will be embedded in the preparation and production of any subsequent planning compliance investigation and/or action as it is done currently.
- 7.3 Furthermore, planning compliance investigations are required to be in general conformity with the Council's Local Plan and as such will give due consideration to One Tower Hamlets considerations and the Community Plan.

## **8. BEST VALUE (BV) IMPLICATIONS**

- 8.1 Under Section 3 Local Government Act 1999 the Council 'must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness'.
- 8.2 During the drawing up and assessment of this policy the Council has worked with the relevant interest groups and key stakeholders where appropriate, having regard to economy efficiency and effectiveness, and in conformity with statutory requirements as detailed in the TCPA (1990).
- 8.3 If adopted the policy will serve as key guidance as to our local approach to planning compliance matters and will act as an understanding between the Council and its residents as to how we intend to protect and underpin our planning policies and development control decisions.

## **9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 9.1 The adoption of the Tower Hamlets' Planning Compliance Policy does not have any discernible impacts on the environment.
- 9.2 Consideration will be given to the greener environment during our planning compliance investigations.

## **10. RISK MANAGEMENT IMPLICATIONS**

- 10.1 The adoption of the Planning Compliance Policy has been reported through a number of internal groups that consider risk management issues and mitigation. These include:

- Development & Renewal Directorate Management Team
- Corporate Management Team

## **11. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 11.1 The adoption of the Planning Compliance Policy does not have any discernible impacts on crime and disorder.
- 11.2 At the stage where established Neighbourhood Planning Forums are developing NDPs or NDOs for the designated Neighbourhood Planning Areas Consideration will be given to the implications of crime and disorder on the built environment during our planning compliance investigations.

## **12. SAFEGUARDING IMPLICATIONS**

- 12.1 There are no specific safeguarding implications associated with this report.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

NONE

#### **Appendices**

Appendix 1: Proposed submission version of the *Tower Hamlets Planning Compliance Policy*

#### **Officer contact details for documents:**

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