

To: Housing Panel

Date: 4 February 2015

Report of: Head of Environmental Development and Head of City Development

Title of Report: Unlawful Developments Progress Report

Summary

Purpose of report: To Provide the Housing Panel with a status report

Key decision No

Executive lead member: Cllr. Ed Turner

Report author: Paul Fitzgerald

Policy Framework: Meeting Housing Need

Appendices to report – *Appendix 1 – GIS Layered Maps, Appendix 2 – Ward breakdown of Unlawful Developments, Appendix 3 – Case Studies, Appendix 4 – Cross Working list*

Purpose of Report

1 The Scrutiny Housing Panel requested an update on the progress of the Unlawful Developments project and this report provides members with information on progress to date and comments on future options following the end of DCLG funding on 31st March 2015.

Background

2 Nationally the phenomenon of ‘beds in sheds’ has been well reported, and has been considered to be confined mainly to major conurbations in the south east of England. They are essentially converted garages, or out-buildings, which often lack sanitation and other necessary facilities, but may be capable of being occupied on a self-contained basis. In some instances they are attached to, or are integral to, the main structure.

3 Given the pressures on housing provision and high rental values in Oxford, it was no surprise that instances of such developments have been reported in the city.

4 In response officers carried out a pilot survey of 11 streets in the Cowley and Lye Valley areas of Oxford in 2011/12. Initially 64 dwellings with large outbuildings were identified and investigated, of which 15% warranted enforcement action under planning and/or housing legislation. Migrant workers or young vulnerable families were found to be occupying 90% of the properties that warranted action, i.e. people who were ignorant of their rights and the legal requirements to which such dwellings were subject.

5 Fact finding visits were made to two authorities who have already been dealing with this issue (Slough Borough Council and the London Borough of Ealing) to discover good custom and practice. It was noted that these authorities had longstanding problems and were quite different in nature to Oxford. One authority was of the view that regularising the unlawful dwellings was the best approach because many of them were exempt from planning enforcement controls. This is because an unlawful development becomes lawful if it has been in use for four years or over. The other council was applying a policy of trying to deal with poor properties and deter future developments by using enforcement action where possible.

The Council's response and key aims

6 The Council, therefore decided to establish an Unlawful Development project to run from April 2013 to March 2015, with a budget of £150,000. The purpose of the project was to:

- (a) provide some certainty on the scale of the problem in Oxford
- (b) take enforcement action to act as a deterrent to unscrupulous developers and
- (c) demonstrate to residents that the Council will take action against unlawful developments to prevent the proliferation of poor quality properties in Oxford.

7 An opportunity then arose for additional match funding from the DCLG's Rogue Landlord Programme. This bid for £150,000 was successful and that funding became available in January 2014 and also runs until March 2015.

Project Delivery

8 The team was initially comprised of a Team Manager and a Planning Enforcement Officer to deal with those cases already identified, pending further research to establish the extent of the problem. Additional staffing resource has been added as the workloads were identified for investigation and the team currently consists of a Team Manager, two Planning Enforcement Officers, an Environmental Health Officer a GIS Data Analyst and a Residential Safety Support Officer. Mobile working is being used to increase the efficiency and productivity of field staff and reduce overall costs.

9 Slough Borough Council had demonstrated that an aerial survey was an extremely useful investigative tool. An aerial survey employs state of the art LIDAR technology which not only identifies unlawful dwellings both attached and detached from the main dwelling, it also indicates those in use, via thermal imaging and provides a base line of data to which future surveys can be compared. A city wide, aerial survey was commissioned at a cost of £23,000 by Blue Sky International, employing the technology detailed above. This was weather dependant and was completed in March 2014 with the data becoming available in June 2014.

10 The data provided from that survey is presented as a number of layered maps (see appendix 1), which identifies what should be there, what is actually there and its size, the topography of the land and buildings and the heat profiles.

11 From this we were able to identify those properties that had been built without the benefit of planning permission and building regulation approval, those that were of a sufficient size to have the potential to be used for residential accommodation and those which had a heat profile suggesting they were in use.

12 The number of buildings identified is far more than had been expected and are spread across the city, with concentrations in those areas where the building and land type lends itself to that use (larger gardens, detached or semi-detached properties with side or rear access). The total figure of unlawful developments was in excess of 5,000 with approximately 2,700 having a suspicious heat profile (see appendix 2, unlawful dwelling distribution maps by ward).

13 Further desktop exercises have been carried out to refine the list of Unlawful Developments, using databases such as uniform, council tax, housing benefits, electoral register etc.

Targeting Action

14 The Oxford approach focussed on two distinct property types. Properties were divided into either Houses in Multiple Occupation (HMO), or those used as single family dwellings, either owner occupied or privately rented.

15 Approximately 140 properties with unlawful developments were identified as being licensed HMOs. To date 80 of these have been revisited and in 15 cases the licence conditions have been amended to exclude the use of the unlawful structure as residential accommodation. Any breach of this condition will then be dealt with by the HMO enforcement team.

16 For the properties in single occupation a site visit is made to attempt to ascertain the use of the structure. To date a total of 861 visits have been made to investigate unlawful dwellings. These investigations have shown that

approximately 10% of those properties built without planning and building regulation approval that have a suspicious heat profile are being used illegally as residential accommodation. If this figure is applied over the whole city, there are currently approximately 270 such buildings in Oxford, although this does not mean that others may not be brought into use at a later date.

Enforcement Approach

17 Irrespective of the physical condition of those properties, our primary approach is to deal with the absence of planning consent. A substantial amount of planning enforcement activity has now taken place and this will increase over the coming months. The normal planning options are removal of the building (the preferred option) or to take such steps as will prevent its use as a residential dwelling (removal of kitchens and/or bathrooms) and revert to some other use, such as a store, study room or gym.

18 To date 33 Planning Enforcement Notices have been served and a further 10 are due to be served by 31st March 2015. To put this in context, the average number of Planning Enforcement Notices per year is typically 8. This action has resulted in 3 demolitions and 7 unlawful dwellings no longer being in use.

19 In nearly every case where a Planning Enforcement Notice has been served, an appeal is lodged with the Planning Inspectorate. The vast majority of these are found in favour of the local authority. Each appeal generates a fee income of £770 in most cases.

20 In addition to planning enforcement, legal action can be taken by Environmental Development, mainly under the Housing Act 2004. Where housing conditions are so poor as to present an imminent risk to the health, safety or welfare of the occupants, emergency works and/or prohibition orders may be served. In other instances, the preferred option is to prohibit the use of the structure for residential accommodation, under Part 1 of the Housing Act 2004. Should the prohibition order be contravened, there is provision to prosecute the landlord and replace the prohibition order with a demolition order. A range of conditions have been encountered, which has resulted in a range of interventions. It has been necessary to obtain warrants from the magistrates on 2 occasions to enter premises to carry out an inspection. To date 8 emergency notices have been served under the Housing Act 2004 and further notices are due to be served, giving an expected total of 50 notices by the end of the project.

21 In all cases where there is the potential to displace tenants, the tenant and Housing Allocations are informed to prevent cases of homelessness and to provide suitable alternative accommodation.

22 Where a structure is discovered as being used for residential accommodation, it is referred to Council Tax for re-evaluation. This has the potential for additional income and so far 10 confirmed new unlawful dwellings have been put forward to Council tax for banding.

Cross Working

23 It is inevitable that the project overlaps a number of organisations, internal and external, official, voluntary and individuals, and these have been listed at appendix 4.

24 Twelve cases have been referred to HMRC for income tax and VAT evasion for further investigation, with a further data sharing meeting scheduled for the 27th January 2015.

25 The data obtained from the aerial survey will be of benefit to other Council services, for topics such as energy efficiency, flood prevention and this has been made available on the Council's GIS system.

Primary Outcomes

26 By the use of innovative technology and follow up visits the project has established the extent of the unlawful development problem within Oxford City Council. The Council can say with reasonable confidence that there are approximately 270 unlawful dwellings in the City being illegally used as accommodation. This figure is being reduced by the enforcement action currently underway.

27 There is some reassurance in this figure as it indicates that the position in Oxford is much better than some other urban areas in the south east where the local authority has effectively lost control and local residents have joined in rather than complained about the building of unlawful dwellings for rent.

28 Successful Planning Enforcement action has been commenced at an unprecedented scale in Oxford which has resulted in several unlawful properties being demolished. These in turn have been publicised in the local media and on television and this continues to be the case as the team are currently filming with the BBC Programme "Housing Enforcers" which will be shown later this year. This has helped reinforce the Council's position that it will not tolerate unlawful developments and wishes to encourage local residents to speak up about unacceptable and illegal structures being built in their areas.

Future Work

29 This problem will not go away. The financial gain to unscrupulous landlords is too great, and temptation will always be there if these unlawful structures are allowed to remain. However the primary funding source has now been used and there are no further pots of government money available.

30 There are also concerns from City Development regarding the scale of the appeals that will have to be dealt with that are a result of the high number of Planning Enforcement Notices served.

31 The proposal for 2015/16 is to roll forward any underspend in the Environmental Health budget to sustain the project at a reduced level and make a bid for additional funding at the mid-year point.

Recommendation

32 The Committee is recommended to note the report and provide comments regarding the proposed extension of the project.

Name and contact details of author:-

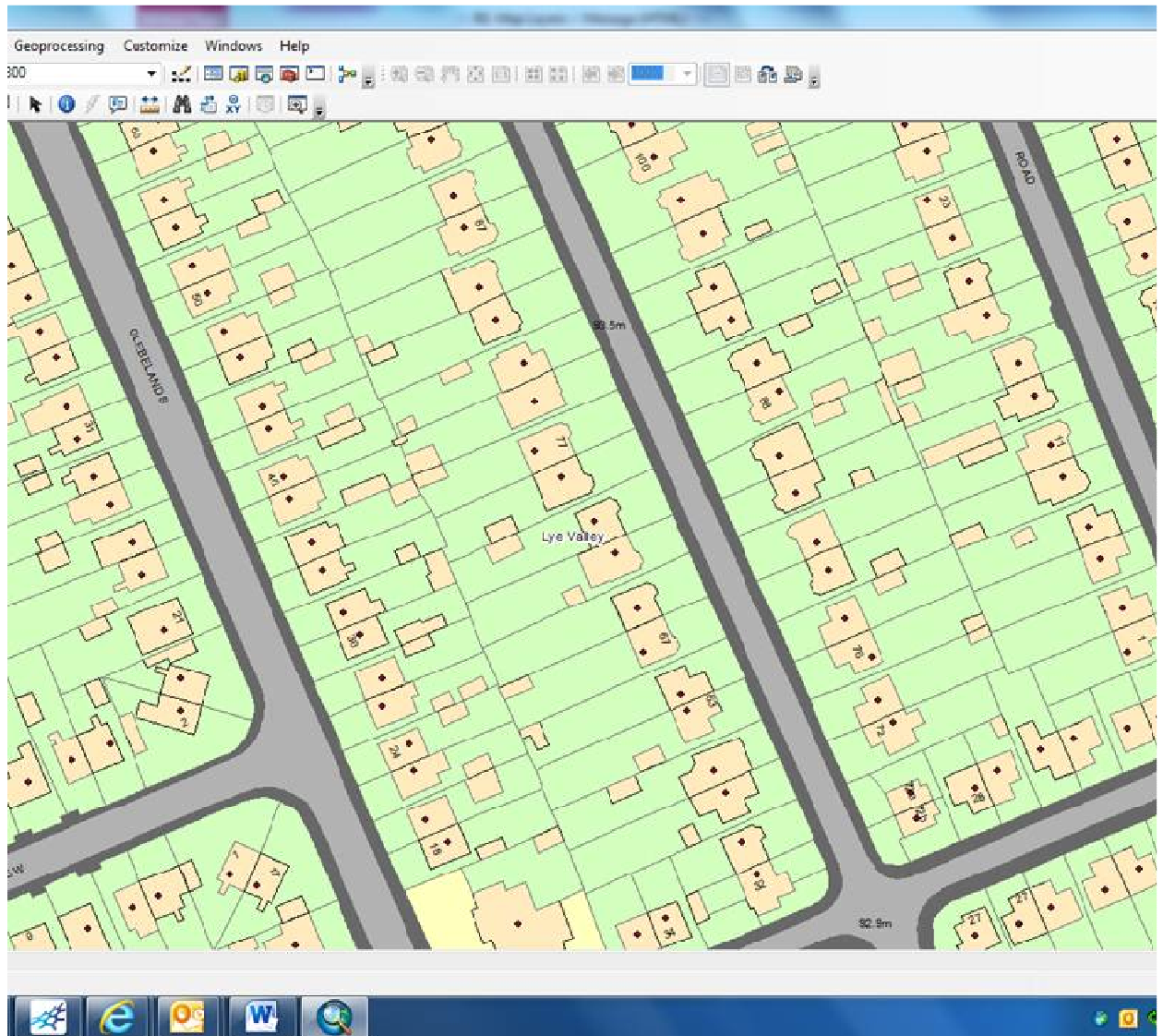
Name: Paul Fitzgerald
Job title: Unlawful Developments Manager
Service Area / Department: Environmental Development
Tel: 01865 252298 e-mail: paul.fitzgerald@oxford.gov.uk

Version number: 4

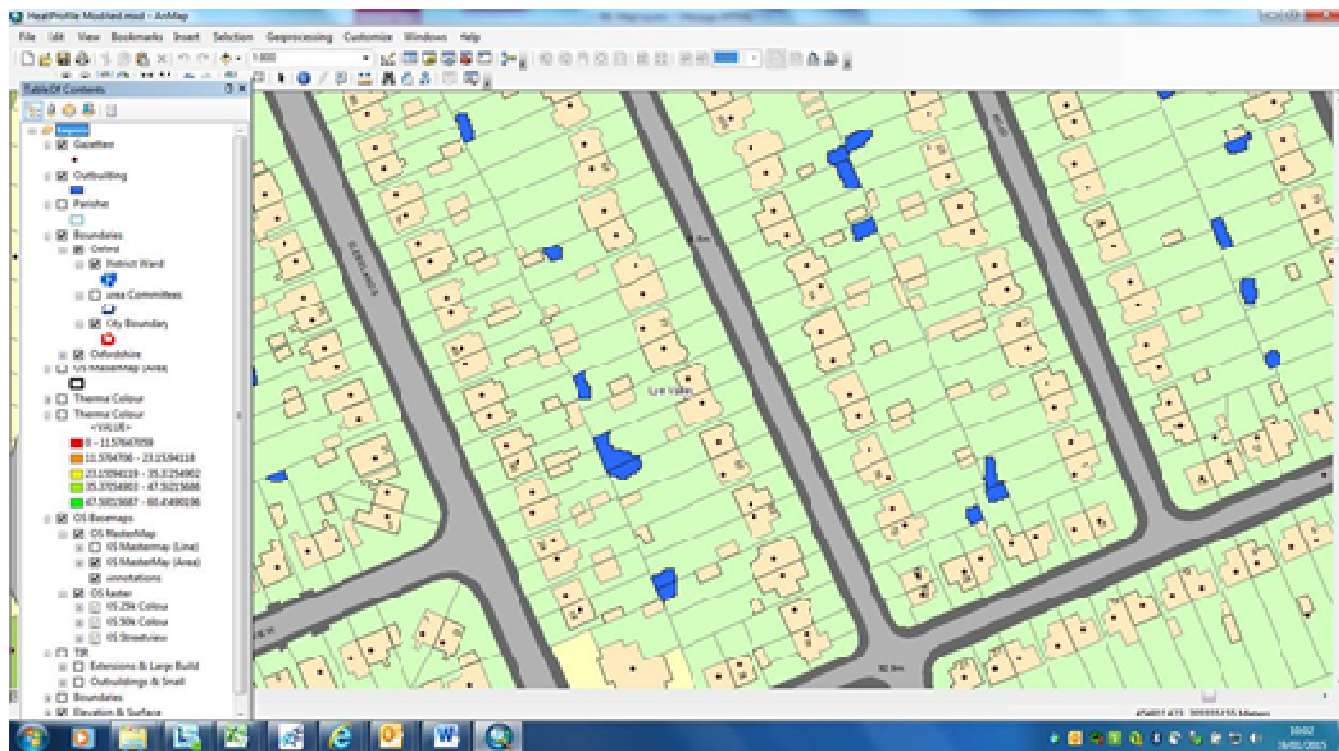
Appendix 1.

Layered Maps.

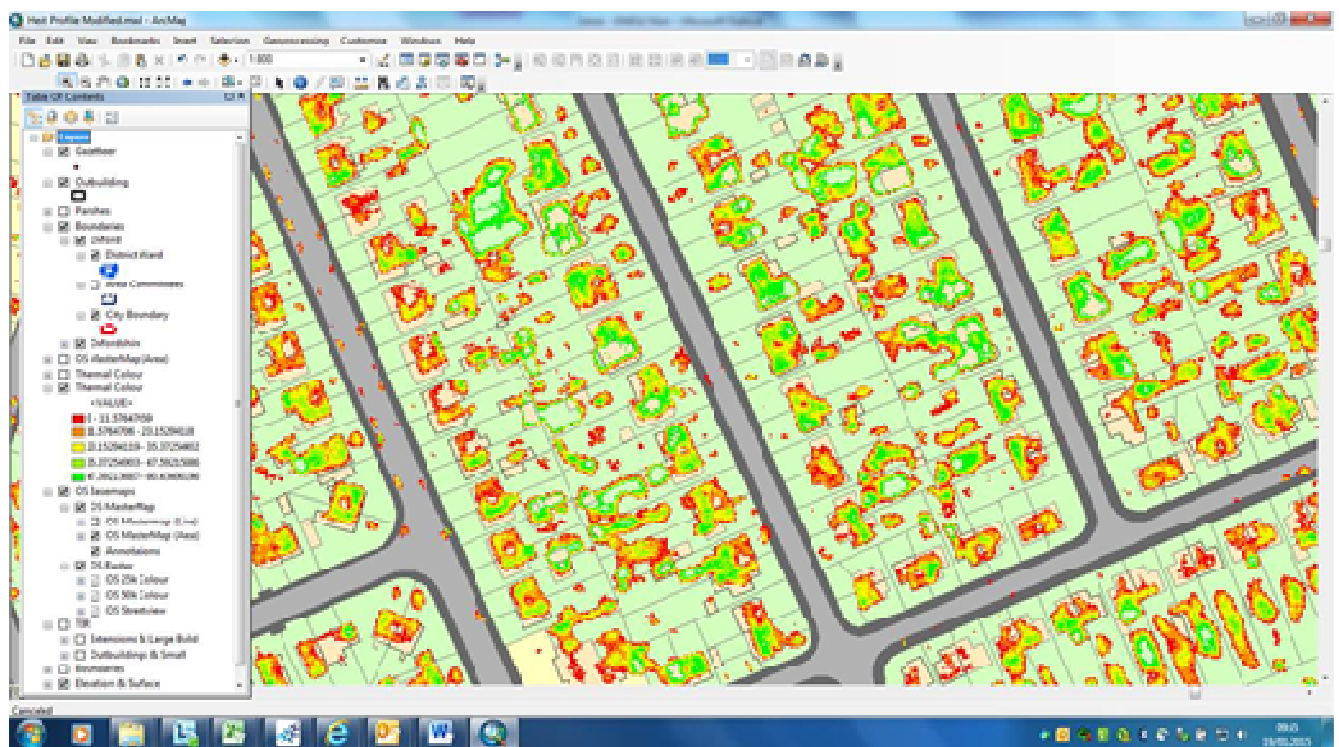
Base layer – what officially should be there.



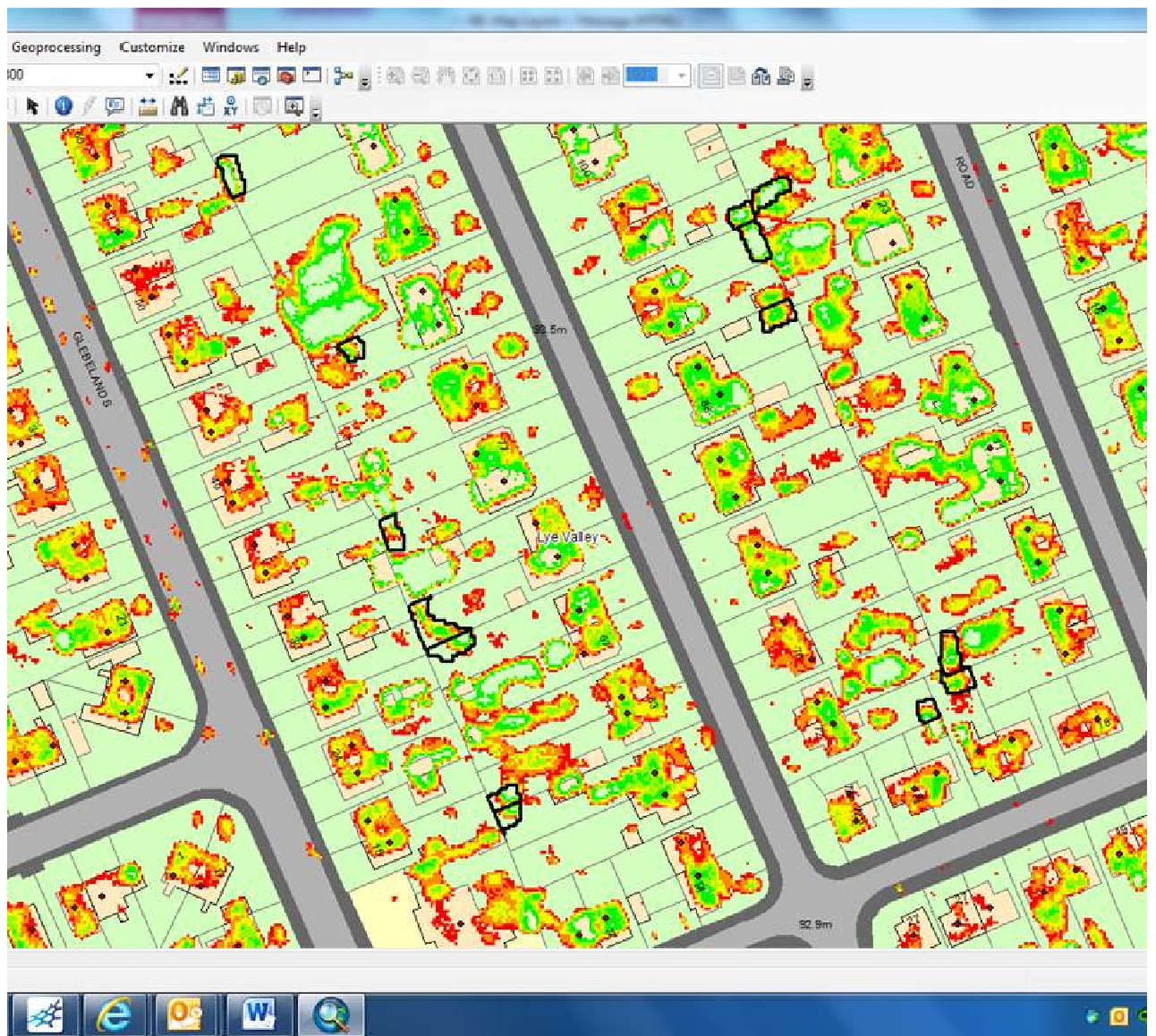
What is actually there – the blue shading indicates an unlawful development



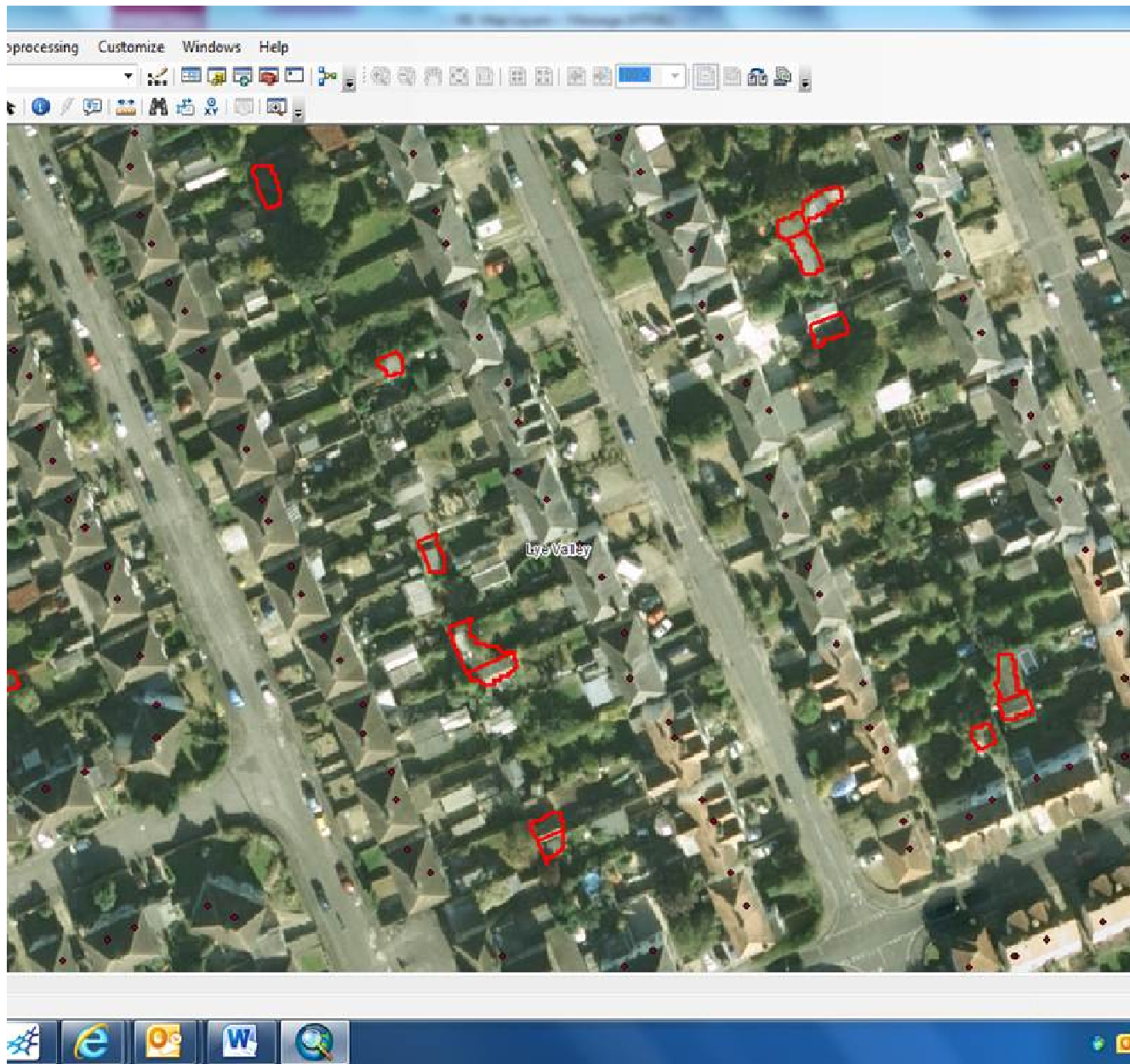
Heat profiles of every building and structure



Properties requiring further investigation are outlined in black.



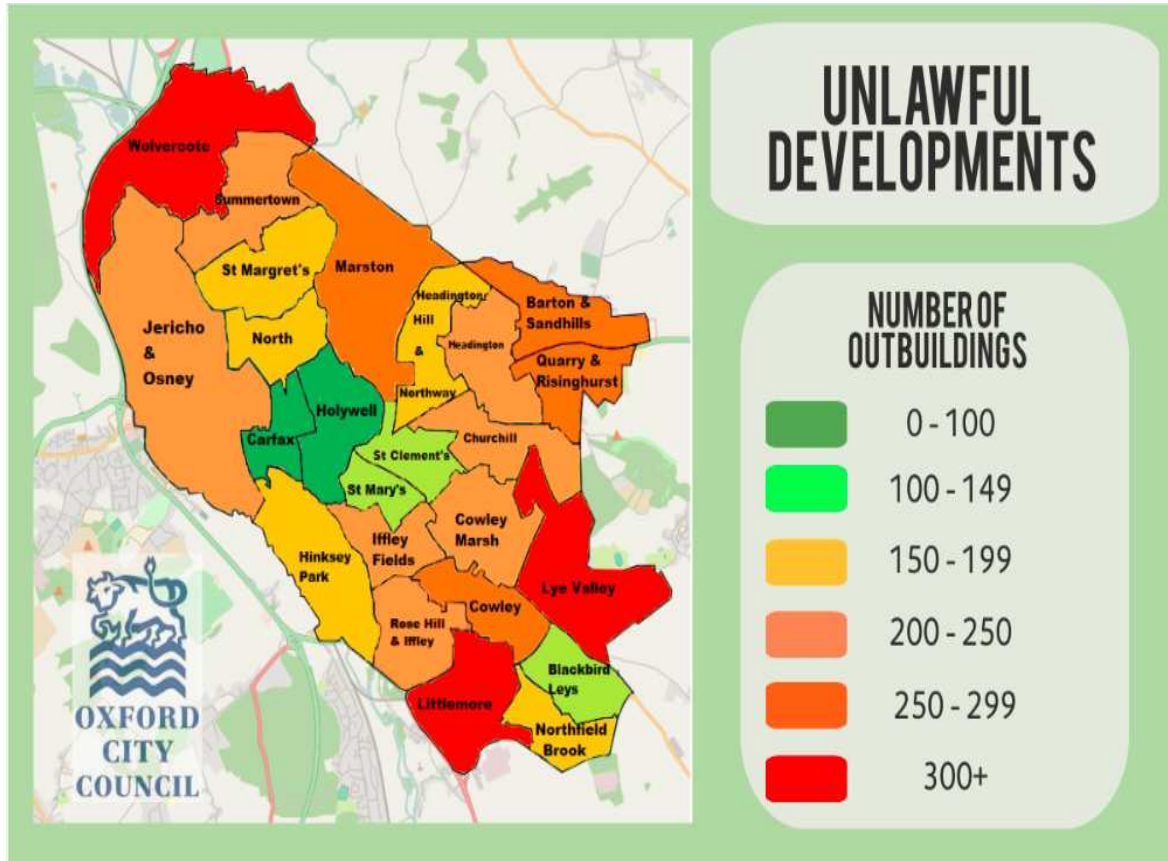
View from the air – unlawful developments are highlighted in red

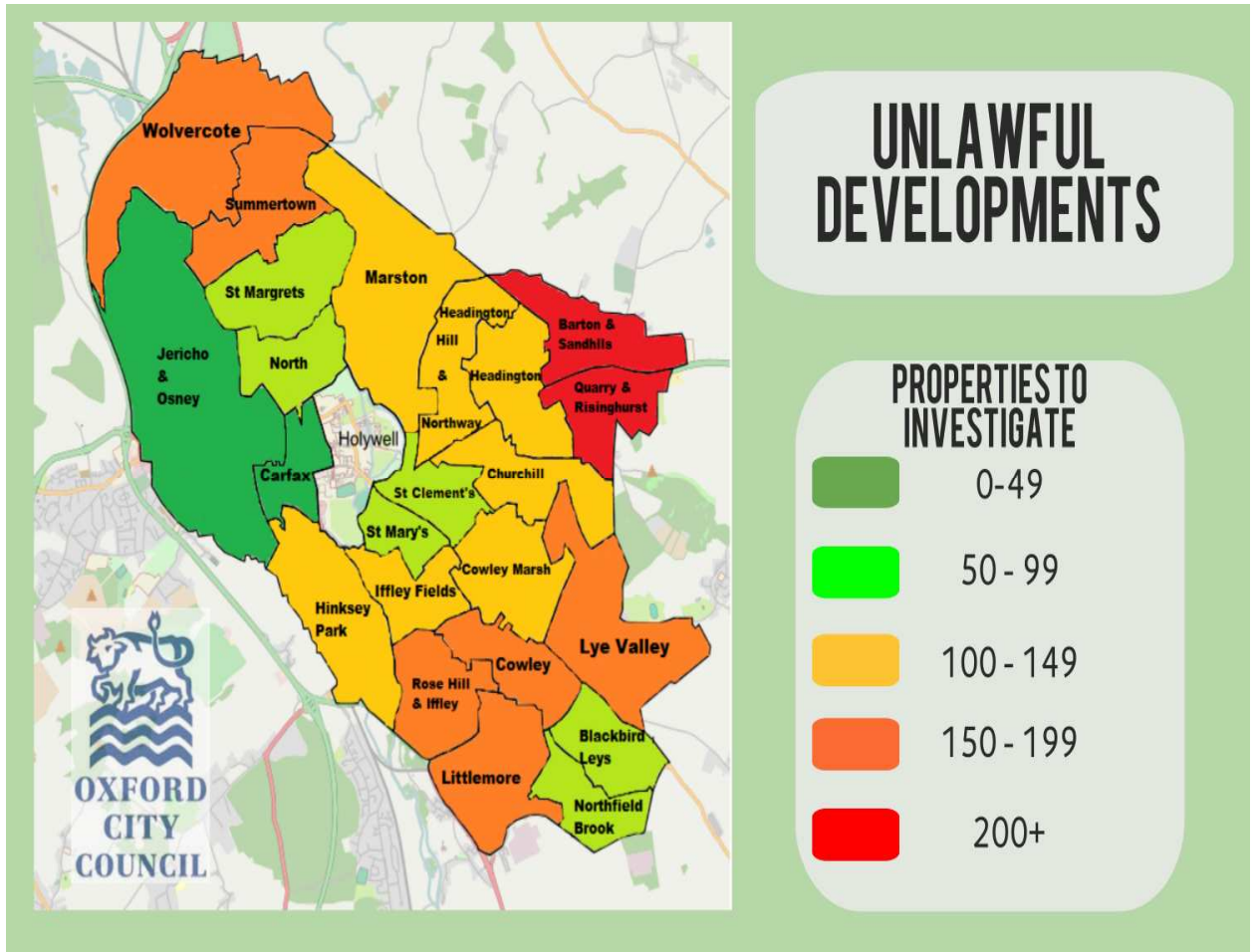


Appendix 2.

Distribution of unlawful dwellings by ward.

Total Number





Distribution of unlawful dwellings showing a heat profile.

Appendix 3 - Case Studies

1. Cowley Marsh

Background.

Property identified, due to unusual heat profile, routine visit by investigating officer, found two gentlemen of East Timor origin asleep in the a dilapidated asbestos garage mid-afternoon. Main property rented to a young couple also from East Timor, claiming to be the sister of the men in the garage.

No fixed heating or insulation to the structure, meant it was unhealthily cold. The power supply was a cable strung across from the kitchen, leading to a risk of electrocution and fire. There were no cooking or sanitary facilities. Numerous other hazards also existed at the property.





Action

Conditions were deemed to be so hazardous, that there was an imminent risk to the health safety and welfare of the occupants. An emergency prohibition order was served for the structure to be vacated and emergency works were undertaken to disconnect the electrical supply and secure the building. The occupants vacated the premises before the notices were served and the work carried out.

This has not been the only extreme case discovered during the project, but is probably the worst.

2. Lye Valley

Background

Planning were informed of a large structure being built at the rear of a bungalow clearly visible from the road at the rear. No application had been made for either planning or building regulation permission. The overall footprint was larger than the main building and took up almost the entire rear garden. Visits were made by the planning enforcement officer; the owner claimed the building was going to be used as a gym. He was advised to cease work and make the relevant applications.





Action

As no application had been made and works had continued despite advice from the planning enforcement officer to the contrary, a planning enforcement notice was served requiring the demolition of the building and the removal of all building materials and waste from the site. The owner complied with the notice.

Appendix 4

Cross Working

- Thames Valley Police – Information provision and joint visits
- UK Border Agency – Information provision
- Her Majesties Revenue and Customs – Information provision and feedback
- Oxfordshire Fire and Rescue Authority – Information provision and joint visits.
- Oxfordshire Trading Standards – No activity as yet.
- OCC Planning Department – Information provision, joint visits and enforcement.
- OCC Benefit Fraud – Information provision and feedback.
- OCC Building Control - Information provision, joint visits and enforcement.
- OCC Housing Services including Homeless Team – Information provision, joint visits and feedback.
- Oxfordshire Social Services, Children & Families – No activity to date, lines of communication established.
- OCC Council Tax – Information provision and feedback.
- Environmental Development Community Response Team - Information provision, joint visits and enforcement.
- OCC Legal Services – Enforcement.
- National Landlords Association and the Association of Residential Letting Agents.- Information provision.
- Voluntary Sector – Information provision, training.

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