

London Borough of Merton

Report and recommendations arising from a scrutiny review of Council enforcement policies

Overview and Scrutiny Commission

November 2006

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Foreword by the review chair

People are often confused by Council decisions. They are truly bemused when these decisions are not enforced in a clear and consistent manner.

The Council is empowered to make decisions on behalf of residents and this power appears to be misused whenever those decisions are not enforced. The will to enforce must be a clear part of all decision making.

Cllr. Simon Withey and I undertook a review of the Council's various policies on enforcement. We met with many officers and I thank them for their time and contributions during the autumn. In particular I must thank Kate Martyn for her work in arranging and attending the many meetings that formed the basis of our report.

We do not want to prescribe a detailed approach but we do believe that an overarching philosophy must be a presumption to enforce.

We hope that Cabinet agrees our recommendations.

Councillor John Bowcott

Chair of the review task group and Vice-chair of the Overview and Scrutiny Commission

Summary of recommendations

1. That one overarching enforcement policy should be developed in order to promote consistency and transparency across enforcement activity carried out by the council.
2. That Senior Officers and the responsible Cabinet Member accept that they are responsible for ensuring that enforcement policies are fit for purpose.
3. That an evaluation process should be established to evaluate the effectiveness of enforcement policies, including measuring the perception of members of the public with regard to how effective the council is in dealing with enforcement.
4. That there should be a presumption to enforce (in accordance with the principles of fairness, proportionality and the public interest test) for all breaches of council policy and that any enforcement action be undertaken in a timely way.
5. That Cabinet consider the desired approach of the council with regard to enforcement and then assess whether the resources currently allocated to enforcement activity are sufficient to achieve this.
6. That resources should be increased within the planning enforcement team in order to ensure that the team has the capacity to proactively enforce planning decisions and to publicise the message that the council will robustly enforce its planning decisions.
7. That greater efforts are made to make businesses aware of their part in ensuring that members of the public are able to move freely and safely on pavements and that action is taken against businesses that continue to place obstructions on pavements.
8. That information should be provided to ensure that members of the public have the information they need to report possible breaches/offences for the council to investigate and take action.
9. That representatives from all of the enforcement teams meet regularly to share knowledge and good practice between the teams and learn from their collective experience and that enforcement staff are supported with training and development opportunities to enable them to build strong cases.
10. That opportunities for joint working between the Building Control and Planning Enforcement should be explored.
11. That enforcement teams and Legal Services should develop a service level agreement to ensure clarity over lines of responsibility in taking forward prosecution action.
12. That education/awareness campaigns should be run and that improved information sources should be developed in order to increase public awareness of rules/regulations and the corresponding enforcement policies to be applied in the event of non-compliance. This needs to be coupled with reminders that enforcement action is to be proportionate so that the expectations of complainants are not raised too high.
13. That a positive approach should be applied to publicising good enforcement outcomes in order to build public confidence in council enforcement.
14. That the Member Development Plan should incorporate training to ensure that members understand the council's scope for action on enforcement and to equip councillors with the information they need at their finger tips to advise constituents without referring to officers.

1. Introduction

- 1.1. Ward councillors know from discussions with constituents that members of the public are confused about what the council will and will not allow to happen in the borough, and what action the council will take when offences are committed or decisions breached. They also hear regularly that residents feel that policies are applied inconsistently and this results in dissatisfaction.
- 1.2. This anecdotal evidence prompted this review. The task group were keen to identify the enforcement policies in place across the organisation and assess how the policies are implemented. They also wanted to evaluate how council enforcement policies are communicated to the public and explore how the council could encourage local people to assist the Council in its enforcement role by reporting offences, for example by littering or fly tipping?
- 1.3. When agreeing the scope for this review, the task group were clear that the review should not go into the specific details of the various enforcement policies across the council but instead should examine how the policies are implemented. They felt strongly that any scrutiny of the policies themselves would require a much larger scale review. That said, it was considered part of the review remit to assess the format of the council's enforcement policies.
- 1.4. In order to gather this information the review involved desktop research and interviews with a wide range of enforcement staff (see Appendix I). This report sets out the findings and resulting recommendations.

2. The policy itself

- 2.1. In order for the council's enforcement teams to carry out their duties effectively they must be clear about the scope of their role and how enforcement action will be carried out in practice within their area.
- 2.2. In discussions with enforcement officers, the task group were reassured that the council's enforcement teams do have written procedure manuals used by staff, ranging from step-by-step procedure manuals (for example, the 'blue book' used by the Licensing Team) to agreed enforcement policy documents which set out clearly and publicly how enforcement decisions are made and what the public can expect (for example the recently agreed street management prosecution policy). The task group also learnt that in some cases there is no local policy in place as requirements regarding enforcement are set out in statute.
- 2.3. The development of written policies and procedures by the different teams is to be commended as it helps to ensure consistency of approach and builds resilience within the teams. However, the variety of different enforcement policies, documents and processes across the council gives the impressions that the authority has a piecemeal approach to enforcement. This is to be expected to a certain extent given the diverse nature of the different enforcement strands across the council and the task group did not identify any significant problems in implementing enforcement policies due to this approach.
- 2.4. Nevertheless, the task group did conclude that there were a number of opportunities to increase consistency among enforcement policies. They recognised that the council has signed up to the 1998 Enforcement Concordat – a voluntary code of practice which sets out what members of the public can expect of the council's enforcement teams, for example to be treated fairly and for action taken to be

proportionate – and the group felt that this is a very positive approach to take. Learning from good practice, this could be developed further by giving the public more information about possible enforcement processes and action. As part of this, an overarching enforcement policy for the council could codify the council's approach and provide a single source of information for the public, businesses and partners.

- 2.5. Research and interviews with officers identified examples such as Salford City Council¹ and the Environment Agency² where one overarching enforcement policy has been developed for the organisation as a whole.
- 2.6. Such a policy would include:
- details of the different enforcement strands, for example what scope the council has to act in relations to the area of activity;
 - an explanation of the variety of enforcement actions at the disposal of the council;
 - an overarching set of principles that will be applied to assessing how enforcement teams will respond to breaches or offences (similar to the principles set out in the Enforcement Concordat); and
 - an explanation of the processes to be followed when considering what action to take (for example the public interest test or evidential test) and how enforcement decisions will be carried out.

The task group stressed that such a policy should incorporate all enforcement streams, whether there is currently a local policy in place or whether powers are just set out in statute.

- 2.7. The aim of such a policy is to ensure that members of the public – whether people who have committed a breach or offence, people who consider themselves to be victims of a breach or offence, or an interested member of the public – are able to find out easily what the council's stance is on enforcement and what to expect when a breach or offence is identified. As mentioned above, the task group was pleased to see that the council has already recognised the benefits of formalising enforcement approaches with the development of a street management prosecution policy.
- 2.8. Going through the process to develop an overarching policy would enable enforcement teams to challenge their current ways of working to ensure that they have the best approach for the borough. Furthermore, it is anticipated that an overarching policy would promote greater consistency across enforcement teams and ensuring that this is written down and published will increase transparency.
- 2.9. Ultimately, it is the responsibility of Senior Officers and the responsible Cabinet Member to be confident that enforcement policies are fit for purpose and that the effectiveness of these policies is assessed on a regular basis in order to test this fitness. With this in mind, there should be an evaluation process in place to do this and the task group did not receive evidence that this is currently in place. Part of this process should involve measuring the perception of members of the public with regard to how effective the council is in dealing with enforcement, for example through a question in the Annual Residents Survey.

Recommendation 1 – That one overarching enforcement policy should be developed in order to promote consistency and transparency across enforcement activity carried out by the council.

¹ http://www.salford.gov.uk/enforcement_policy.pdf

² <http://www.environment-agency.gov.uk/commodata/acrobat/enfpolicy.pdf>

Recommendation 2 – That Senior Officers and the responsible Cabinet Member accept that they are responsible for ensuring that enforcement policies are fit for purpose

Recommendation 3 – That an evaluation process should be established to evaluate the effectiveness of enforcement policies, including measuring the perception of members of the public with regard to how effective the council is in dealing with enforcement.

3. Implementing the policy

- 3.1. Whenever the council agrees a policy or makes a decision it is vital that it is prepared to enforce that policy or decision. If not, the council will be seen as a 'soft touch'. It follows that a reputation for not enforcing decisions is likely to result in a greater number of breaches as people think they can get away with not complying with the rules.
- 3.2. As mentioned above, the council needs to be clear about its policy regarding enforcement and that this information is conveyed to the public. But this is not enough. The council must take action otherwise it risks reputational loss and undermines the decisions and policies it has adopted. Fundamentally, if a policy is not enforced then it might as well be withdrawn, as it has no bearing on the reality of how the council carries out its work.
- 3.3. The task group strongly believe that for all aspects of the council's enforcement work Merton should have a presumption to enforce (in accordance with the principles of fairness, proportionality, public interest test, etc.) and that any enforcement action should be undertaken in a timely way. The Environment Agency's 'firm but fair' approach could form a blueprint for Merton's approach.

Recommendation 4 – That there should be a presumption to enforce (in accordance with the principles of fairness, proportionality and the public interest test) for all breaches of council policy and that any enforcement action be undertaken in a timely way.

- 3.4. The task group were impressed by the level of commitment demonstrated by all the officers interviewed and, by extension, their teams and thanks them for their hard work. They do recognise that generally for enforcement teams to do more additional resources may be required. However, if the council is to take enforcement seriously – and be taken seriously in relation to enforcement – greater resources will be needed to be proactive.

Recommendation 5 – That Cabinet consider the desired approach of the council with regard to enforcement and then assess whether the resources currently allocated to enforcement activity are sufficient to achieve this.

- 3.5. On balance the task group were satisfied that officers are doing a good job and doing what they can to enforce the council's policies in light of the resources available. However, concerns remain about the lack of enforcement of planning permission breaches and obstructions on the pavement. Interviews with officers confirmed the public perception that these issues are not rigorously enforced.
- 3.6. With regard to planning enforcement, it was very clear that the will to be more proactive in addressing planning breaches is there but that it is felt that the resources

available are not sufficient to carry this out. As one of the most high profile aspects of the council's work, public perception regarding planning matters, and particularly planning enforcement, can have a significant impact on residents opinions on the performance of the council as a whole. This, along with the fact that constructions are permanent features in the community and as such not easy to overlook, means that the council must ensure that it reacts to public concern. This team must continue to deal with reactive work as it comes in, but also should proactively inspect and take action on breaches it identifies. In order to do this an increase in resources is required. The task group sees this as an investment because ensuring that breaches are enforced will send a message to developers and the public that breaches will not be tolerated. Over time the workload will reduce as the council's reputation will reduce the number of deliberate breaches or people 'trying their luck'.

Recommendation 6 – That resources should be increased within the planning enforcement team in order to ensure that the team has the capacity to proactively enforce planning decisions and to publicise the message that the council will robustly enforce its planning decisions.

- 3.7. The task group also have concerns about how obstruction of the pavement offences are dealt with as there seems to be a reluctance to actively enforce licensing arrangements for tables on the pavement outside cafes, flowers displayed on the pavement outside florists or the siting of A-boards, for example. In some cases, there is a health and safety issue associated with such breaches, for example where pedestrians are forced onto the road as they cannot pass on the pavement. This remains a key concern for local people but it is not enforced, as it is not seen as a priority.
- 3.8. Greater efforts need to be made to ensure that members of the public are able to move freely and safely on pavements and along the roadside and businesses must recognise their role in achieving this. An education and awareness programme should be launched to make businesses aware of their responsibility and take action with those that continue to place obstructions on pavements.

Recommendation 7 – That greater efforts are made to make businesses aware of their part in ensuring that members of the public are able to move freely and safely on pavements and that action is taken against businesses that continue to place obstructions on pavements.

- 3.9. As part of our discussions with officers, the task group found that generally speaking enforcement teams have to rely on the public to alert them to breaches, because current resource levels are not sufficient to carry out proactive patrols (acknowledging that for some enforcement areas legislation does not allow local authorities to routinely inspect, for example licensing).
- 3.10. Whilst in an ideal world the task group would like the council to have enough enforcement officers to be able to proactively go out to identify breaches/offences, they acknowledge that the authority does not have sufficient funding to be able to resource this. The council should, of course, seek to be as proactive as possible within the resources available, but should also recognise that the people who know their neighbourhoods best are often in a good position to tell the council when things are going wrong.
- 3.11. The council should encourage the public to report incidents where things have not been done properly or their experiences do not meet the standards expected. But in order for them to do this, they need to know what sorts of things to report and how to report them. With this in mind, clear information should be provided stating what the

council enforces (in line with Recommendation 1 above) and the various ways in which they can inform the council (for example by e-mail, telephone, letter, through their ward councillor). This information should be provided in a variety of formats and in a number of locations (for example good practice leaflets, the council website, My Merton, Green Guardian).

Recommendation 8 – That information should be provided to ensure that members of the public have the information they need to report possible breaches/offences for the council to investigate and take action.

4. Joined-up working

- 4.1. The task group were pleased to hear that there are good working relationships between many of the enforcement teams and often information is shared to ensure that joined-up action can be taken. In addition to this, work has been done to make efficiencies and improve service delivery (for example the recent development with the Council Tax bailiff team taking on some of the Parking Team's bailiff work). In order to maximise such opportunities, this informal activity would benefit from being formalised, for example by arranging a regular meeting of representatives from all of the enforcement teams to share knowledge and good practice between the teams and learn from their collective experience.
- 4.2. Linked to this, the council must build on the knowledge, experience and competence of enforcement staff across the Council by supporting staff by providing training on how to build strong cases for enforcement action and prosecutions, and that this is regularly refreshed.
- 4.3. The task group were interested in potential benefits to be achieved through examining how the Building Control and Planning Enforcement teams could work better together, perhaps through sharing some of the inspection burden and reporting back where problems may have been identified. For example, if a Building Control officer is inspecting the foundations as part of his own role, could he also check the planning consent to ensure that the foundations have been laid in the right place? The task group recognise that this is something that does already happen to a certain extent, but think that it could be improved upon to benefit both teams. Certainly, this action would fit with the endorsement of the Ombudsman who has recommended such an approach.

Recommendation 9 – That representatives from all of the enforcement teams meet regularly to share knowledge and good practice between the teams and learn from their collective experience and that enforcement staff are supported with training and development opportunities to enable them to build strong cases.

Recommendation 10 – That opportunities for joint working between the Building Control and Planning Enforcement teams should be explored.

- 4.4. During the course of the review, the task group heard about occasions where there was a difference of opinion between some enforcement teams and the Legal Services team regarding the role of Legal Services when preparing a case for prosecution. Some teams (for example Building Control) had developed a service level agreement with Legal Services to avoid confusion. This is a sensible way of ensuring that officers are clear about the division of roles and responsibilities.

- 4.5. Furthermore, teams demonstrating good practice in developing prosecution cases should share their expertise with other enforcement teams across the council. For example, the Trading Standards team were held up as an example of best practice in investigating breaches, gathering evidence and preparing cases for prosecution.

Recommendation 11 – That enforcement teams and Legal Services should develop a service level agreement to ensure clarity over lines of responsibility in taking forward prosecution action.

5. Information for the public

- 5.1. The council needs to take action to improved public perception about the council's approach to enforcement. There is a clear need to set out what members of the public can expect from the council both in terms of where they themselves make a breach/offence or where they are the victim of an offence/breach.
- 5.2. During discussions with officers the task group learnt that some teams run education/awareness campaigns (for example the Waste Enforcement team's leaflets regarding fly tipping, Building Control's advertising on a local calendar or the Trading Standards curry competition). The task group also heard however about changes in work requiring building control approval/inspections or the introduction of new parking schemes which either do not get publicised or could be better explained to local people
- 5.3. Enforcement teams could do more work to raise awareness and help to reduce the need for enforcement action through ensuring that common mistakes are flagged up for householders. This information needs to be provided in user-friendly language in a variety of formats and locations, for example leaflets, poster campaigns, articles and advertisements in *My Merton* and the local press, links from the front page of the council website to detailed information. Other sources of information and support should also be flagged up, whether contact details for the relevant team or external organisations (for example Trading Standards putting residents in touch with Consumer Direct). There may also be opportunities to reach different groups of residents through the voluntary and community group sector or local area forums.
- 5.4. In addition to this, the review highlighted a need in some cases to manage expectations for members of the public so that they understand where the council is unable to take action, whether due to lack of/limited powers at the council's disposal or where the risk of action taken against the authority to claim for costs of stopped work on a building site, for example. Information provided to members of the public should seek to convey this to residents so that they do not feel let down by the council.

Recommendation 12 – That education/awareness campaigns should be run and that improved information sources should be developed in order to increase public awareness of rules/regulations and the corresponding enforcement policies to be applied in the event of non-compliance. This needs to be coupled with reminders that enforcement action is to be proportionate so that the expectations of complainants are not raised too high.

- 5.5. Finally with regard to sharing information with residents, where the council does achieve positive enforcement outcomes this should be publicised, as the recent example of the prosecution against a Lidl store in the borough shows. By publicising such outcomes, public confidence in council enforcement and the council more widely will grow.

Recommendation 13 – That a positive approach should be applied to publicising good enforcement outcomes in order to build public confidence in council enforcement.

6. Information for councillors

- 6.1. The role of ward councillor is also pivotal in order to both pass information they receive from constituents to enforcement officers and also, where appropriate, to respond to public concerns or queries in the first instance without having to refer the matter on. This fits in with role envisaged for ward councillors in the recently published Local Government White Paper. Enforcement teams need to support councillors to have the required knowledge so that they understand the council's policy(ies) and what can and can't be done.

Recommendation 14 – That the Member Development Plan should incorporate training to ensure that members understand the council's scope for action on enforcement and to equip councillors with the information they need at their finger tips to advise constituents without referring to officers.

7. Conclusion

- 7.1. The task group found this review both interesting and enlightening and felt that this is an area that many councillors would benefit from learning more about.
- 7.2. The council must establish its approach to enforcement and ensure that action matches expectation. This will require an analysis of how 'strong' the council wants to be on enforcement and an allocation of the resources required to achieve this.
- 7.3. The enforcement review scrutiny task group are confident that the recommendations set out above will result in a stronger and more transparent enforcement function in Merton and will watch with interest how these recommendations are taken forward by Cabinet and officers.

Officers interviewed as part of the review:

- Ian Hosking, Environmental Quality and Enforcement Manager
- Kevin McCullagh, Highway Engineering Manager
- Martin Smith, Principal Engineer
- Trevor McIntosh, Building Control Manager
- Richard Nash, Licensing Manager
- Alan Powell, Licensing Officer
- Mike Barrett, Environmental Health Manager
- Paul Walshe, Parking Services Manager
- Steve Page, Parking Enforcement Manager
- Kevin Brophy, Senior Parking Officer
- Marcus Edwards, Planning Enforcement Team Leader
- David Keppler, Revenue and Benefits Manager
- Ian Murrell, Commercial & Trading Standards Manager
- Fiona Thomsen, Principal Lawyer for Litigation and Property