

## Committee: Overview and Scrutiny Commission

**Date: 15 November 2016**

Wards: All

### **Subject: Planning Enforcement update**

Lead officer: Chris Lee , Director of Environment and Regeneration

Lead member: Councillor Martin Whelton, Cabinet Member for Regeneration, Environment and Housing

Contact officer: James McGinlay, Head of Sustainable Communities

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### **Recommendations:**

- A. To discuss the performance and nature of the Planning Enforcement Service and comment as appropriate
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. To report on the performance and nature of the Planning Enforcement Service in the context of TOM savings proposals and potential changes in the service provision.

## **2 DETAILS**

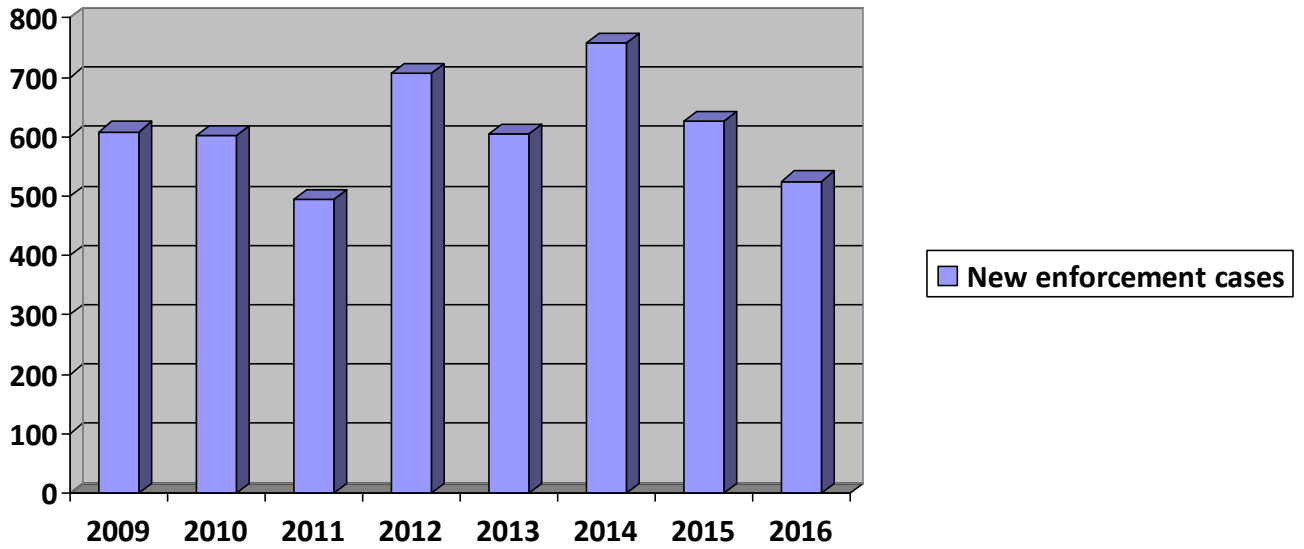
- 2.1. Planning laws are designed to control and manage the development and use of land, buildings and space in the public interest. Planning Enforcement is a vital part of the planning function and it is needed to ensure that the decisions and policies of the Council as the Local Planning Authority are complied with. Without this, unchecked unauthorised developments and change of use would result in a haphazard development that would damage the built environment.
- 2.2. Given this, the enforcement of planning control is a key area of priority for the Council and its stakeholders.
- 2.3. Parliament has given Councils, as Local Planning Authorities (LPAs) the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area since a private citizen cannot initiate planning enforcement action. Council's have a general discretion to take enforcement action, when they regard it as expedient.
- 2.4. In considering any enforcement action, the decisive issue for the Council should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;
- 2.5. Enforcement action should always be commensurate with the breach of planning control to which it relates, as an example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site

- 2.6. Further investigating planning breaches is based on sound planning judgment and covers the entire investigation process, from correctly identifying whether there is a breach of control, to the decision as to what is the appropriate action to take in the context of “Good Practice” advice on enforcement matters.
- 2.7. The general current aim of the service is to ensure that:
1. All enforcement complaints will be treated in confidence and the source of the complaint will be kept confidential. Anonymous complaints cannot be accepted. Residents, who are reluctant or concerned about submitting their details, should contact their Local Councillor who can submit a complaint on their behalf. We will then be able to use the Councillor as the point of contact and they in turn can update the relevant complainant.
  2. All enquiries will be logged and acknowledged. The acknowledgement will include a reference number for that particular enquiry, the name and contact details of the investigating officer and time scale for carrying out an initial site visit.
  3. An initial investigation, including a site visit, will be undertaken within 3, 15 or 20 working days of logging a complaint, depending on the nature and priority of the alleged breach.
  4. The enquirer will be updated within 5 working days after the initial site visit and notified of the outcome of the investigation. If no further action is to be taken, this will be communicated to the customer and the reason for this will be explained.
  5. Some breaches of planning control will not be pursued beyond an initial investigation where subsequent action is found not to be expedient.
  6. Where enforcement action is necessary and expedient, the appropriate notice will be served.
- 2.8. A breach of planning control occurs when:
- a development or change of use that requires planning permission is undertaken without the required permission being granted - either because the planning application was refused or was never applied for,
- or
- a development that has been given permission subject to conditions breaks one or more of those conditions.
- Some examples include:
- building work, engineering operations, and material changes of use which are carried out without planning permission
  - non-compliance with conditions attached to planning consents
  - developments not carried out in accordance with approved plans
  - failure to comply with a legal agreement attached to a permission or consent.
  - unauthorised demolition within a conservation area

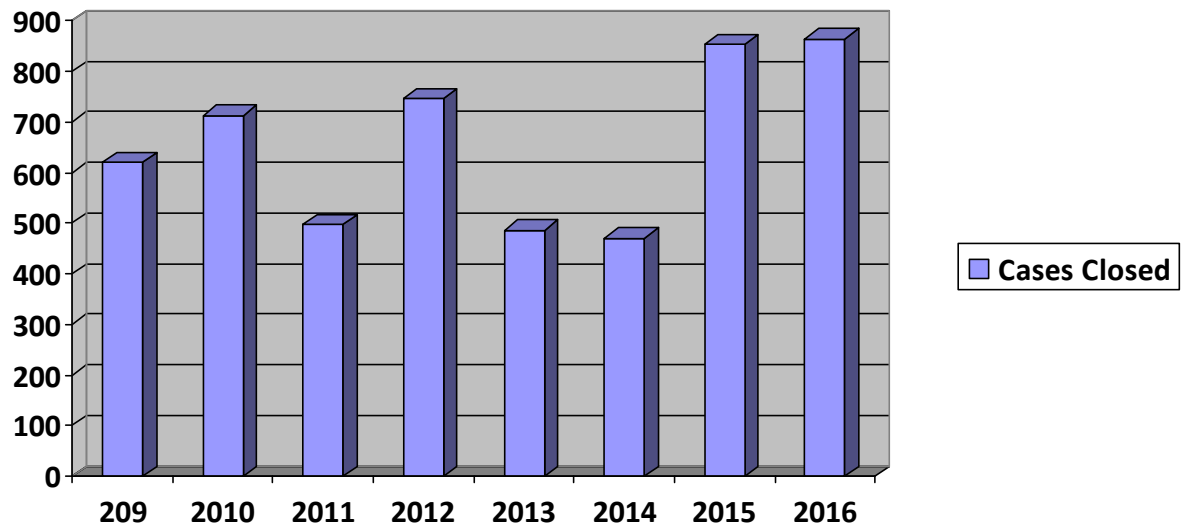
- 2.9. Breaches of planning control are generally not criminal offences, with the exception of:
- unauthorised works carried out to a listed building
  - displaying unauthorised advertisements
  - carrying out unauthorised works to protected trees or trees in conservation areas.
- 2.10. The following examples are not normally breaches of planning control and it is unlikely that enforcement action can be taken using planning powers:
- street parking of commercial vehicles in residential areas
  - sale of vehicles from the highway
  - operating a business from home in certain cases
  - clearing land of bushes and removing trees provided they are not subject to a Tree Preservation Order and are not within a Conservation Area.
- 2.11 Planning enforcement will not investigate the following:
- Neighbour disputes – private not council matter (PNCM)
  - Land boundary or ownership disputes - PNCM
  - Work to party walls – PNCM. The Party Wall Act (1996) produced by the Government, gives relevant advice.
  - Smell, noise and pollution (unless related to a breach of condition attached to a planning permission) as these issues are dealt with by Environmental Health
  - Abandoned cars on the highway. These are dealt with by Street Management.
  - Internal works to buildings. Internal works, which do not involve the conversion of premises into flats, would not normally require planning permission unless it affects a listed building. However, these works may need Building Regulations approval regarding matters of structural safety, drainage, and fire-safety.
  - Obstruction of a private right of way is a civil matter quite separate from enforcement of planning control. It is not a Council matter and it may be necessary to obtain independent legal advice. However, if a new building or a new fence causes the obstruction, Planning Enforcement will need to check whether these structures require planning permission.
  - Encroaching or trespassing – will not normally justify planning enforcement action, or any other action by the Council.
  - Private Trees. Complaints or disputes about trees causing a nuisance to neighbours in private gardens will not be dealt with by Council unless that

2.12 Current performance of the Planning Enforcement Team (2016 predicted)

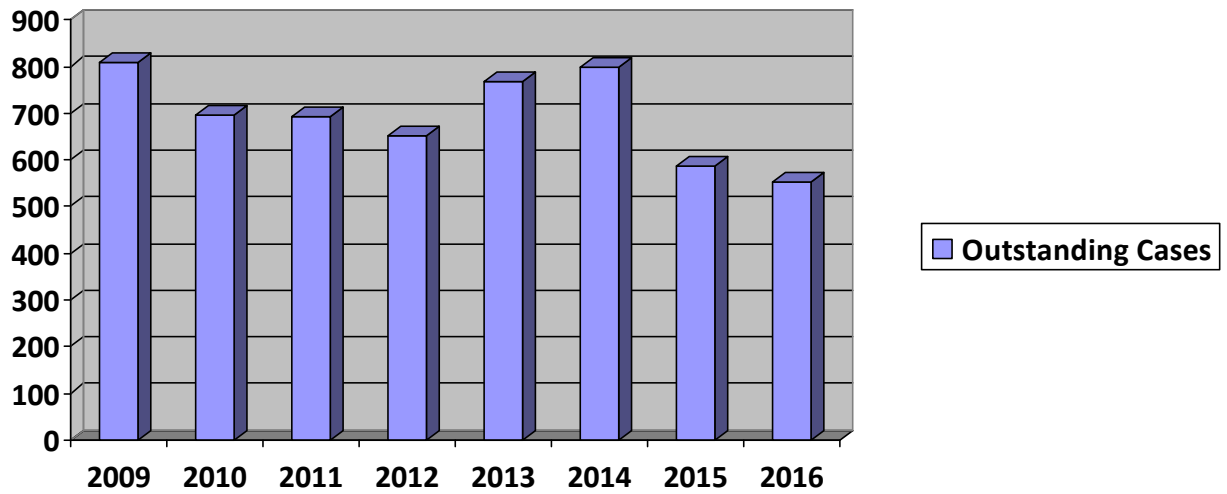
Number of new enforcement cases (2016 predicted)



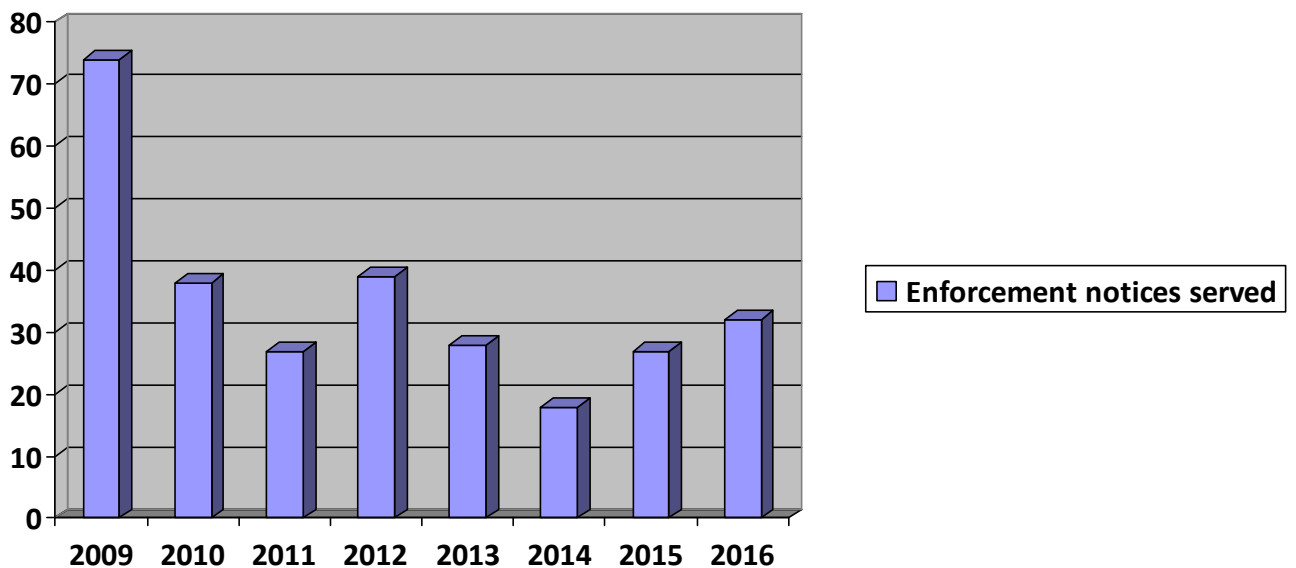
Enforcement cases closed (2016 predicted)



**Outstanding cases (current caseload) (2016 predicted)**



**Total Number of enforcement notices served (2016 predicted)**



2.13

The team has been working hard in recent years to reduce the backlog of outstanding cases. By closing more cases than new ones being opened the deficit is now 551 compared to 808 in 2009. This effectively results in officers carrying an average of 137 compared to 161 in 2009 (5 FTE). Cases closed per officer are now 216 per officer compared to 124 per officer in 2009. This represents an increase in efficiency per officer of 74%.

2.14 Officer performance in investigating sites in relation to the relevant response times set for visits, results in 86% being successfully completed within target. (set out in section 2.7 above). There is room for improvement with better monitoring and more mobile friendly systems.

2.15 **Staffing structure**

Enforcement Team leader (Sam Akoako-Adofo)

Deputy team leader (Ray Littlefield)

Isaac Liu Enforcement officer (Temp)

George Atta-Adutwum (Temp)

The Enforcement team leader also manages the tree officers who are generally not subject to this report but do occasionally become involved in unauthorised tree work issues:

Rose Stepanek

Nick Hammick (part time, shared with greenspaces)

2.16 The enforcement team (specifically planning enforcement officers) was reduced from 5 Officers to 4 FTE in 2009 and the tree officers reduced from 2 to 1.5 in 2011. Notwithstanding this reduction the team have successfully improved performance and efficiency over recent years due to improved use of technology, increased efficiency and hard work.

**Comparison of Merton to other nearby boroughs**

	Officers (FTE)	New cases (2015)	Cases per officer
Merton	4	625	<b>156</b>
Kingston	2.6	259	<b>99</b>
Sutton	3	440	<b>146</b>

2.17 **Analysis of current the caseload of complaints in Merton**

31% of all complaints result in the closure of the enforcement case in the 'no breach' classification. Unfortunately, it is not possible at this time to analyse and split other types of complaints numerically. However, in terms of potential reduced investigation requirements, the no breach set is clearly the most critical. Whilst it is acknowledged residents genuinely feel there has been a breach, it often transpires that there has not been. Clearly this is an aspect of the work load that requires targeted attention to reduce investigations. (See below)

## 2.18 **Future service enhancements planned**

- **Implement mobile working solutions:** The delay in a mobile IT solution has delayed this aspect. The re-procurement of M3 or its replacement should provide a cloud based solution that will allow appropriate equipment to embed full mobile working. With new CRM capability information and complaints will be easily accessed further improve efficiency.
- **Use of eforms;** these are in the process of being developed. They will be electronic form filled in by complainants which then pass directly onto the back office systems without the need to take telephone calls. They can also be used to 'filter' complaints to ensure efficient operation.
- **New Protocol/policy** to reduce enforcement investigations. With 31% of cases resulting in no beach, methods and procedures will be deployed to try and identify such cases earlier in the process by requiring complainants to properly justify why they consider why there is a breach. This will be through education in having more informative webpages and criteria checks on the complaints form before a complaint is accepted for processing. A new formal enforcement policy is being devised to securely establish the set criteria.
- **Shared Service** investigation with Kingston and Sutton. The final report recommended that best practice can be shared through collaboration. Themes identified relevant to enforcement is the functioning of the website and also common recruitment collaboration. There will be opportunities for further collaboration towards potential shared service models in future years.

## 3 **ALTERNATIVE OPTIONS**

### 3.1. **Team Structure:**

3.2. There are still extremely challenging savings attributed to the Building and Development Control team. Whilst it is anticipated that income generation will deliver some of those savings every opportunity should be investigated to make savings including staff reductions. Planning enforcement is not a statutory service although is well perceived and received by Councillors and the public alike. The team structure could be adjusted by removing either the Team leader or the deputy. A restructure could reduce the enforcement officers from 4 to 3 by fully utilising and implementing the TOM targets and efficiencies above.

3.3. This would result in extremely challenging issues with regard to enforcement investigations being undertaken in a timely manner. Significant efficiency improvements would therefore be required over and above those already implemented. Fully implemented Mobile and flexible working, including the necessary devices, is being fully investigated with a view to implementation. In addition, a new re-procured IT system (within the next 2 years) is highly likely to be cloud based thereby facilitating better flexible/mobile working opportunities and efficiencies. Demonstrations with IT suppliers are currently

on going. Response times to certain types of complaint may need to be reviewed and agreed and some more minor types of investigation , especially those where it can be demonstrate that there is likely to be no beech, may be dropped altogether. There is always a danger of ombudsman awards being made against the council due to cases not being investigated fully with due care and attention, however, with the efficiencies outlined above implemented, these should be kept to a minimum.

**3.4. Collaboration with Sutton\Kingston**

3.5. Initial investigations have identified synergies between authorities. Initial collaboration would assist with a move towards a more formal shared service potential in future years without the 'big bang' negative impacts. Merton, Sutton and Kingston each have separate websites, enforcement policies, IT systems and recruitment services. By identifying the best practice in each borough and by formally collaborating, efficiencies will be realised.

**3.6. Cross Department working**

3.7. Planning Enforcement is part of the council's Enforcement Review Task Group now renamed the Locations Board. They work closely with Environmental Health, social services, the police and other emergency services when required. Examples of work include coordinated actions to secure an environmental clear up of a local estate. Joint working is also undertaken on prosecution techniques, the Proceeds of Crime Act and training on enforcement relevant cross team issues.

**4 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1. None

**5 TIMETABLE**

5.1. None

**6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

6.1. None

**7 LEGAL AND STATUTORY IMPLICATIONS**

7.1. Any reduced enforcement investigation capability may result in more Ombudsman awards against the council.

**8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1. None

**9 CRIME AND DISORDER IMPLICATIONS**

9.1. Any reduction in service may reduce the ability to take legal action against breaches of planning control

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. None

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**



None

**12 BACKGROUND PAPERS**

12.1. None

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