

Committee: Sustainable Communities Overview and Scrutiny

Date: March 2018

Wards: All

Subject: Planning Enforcement update

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Martin Whelton

Contact officer: James McGinlay, Head of Sustainable Communities

Recommendations:

- A. To note 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

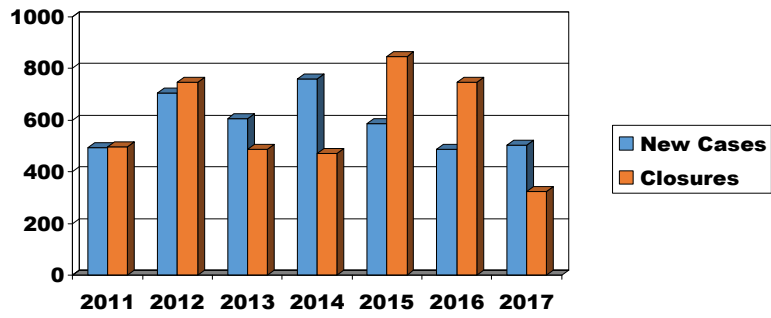
- 2.1. Planning laws are designed to control and manage the development and use of land, buildings and space in the public interest. Planning Enforcement is a vital (albeit non-statutory) part of the planning function and it is needed to ensure that the decisions and policies of the Council as the Local 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 and action taken.
- 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

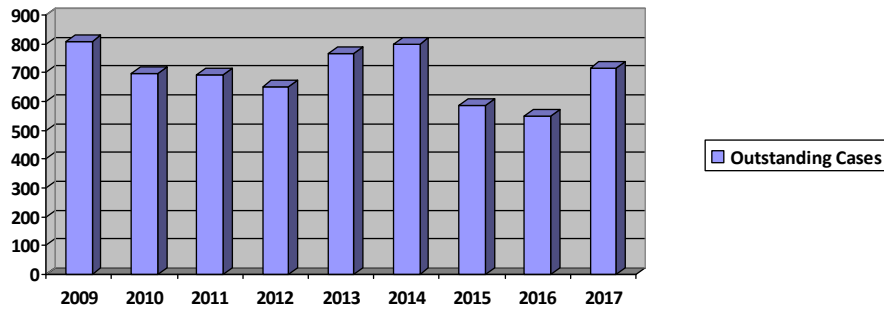
- 2.9. Breaches of planning control are generally not criminal offences, with the exception of:
- unauthorised works carried out to a listed building
 - displaying unauthorised advertisements
 - carrying out unauthorised works to protected trees or trees in conservation areas.
- 2.10. The following examples 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

Current performance of the Planning Enforcement Team

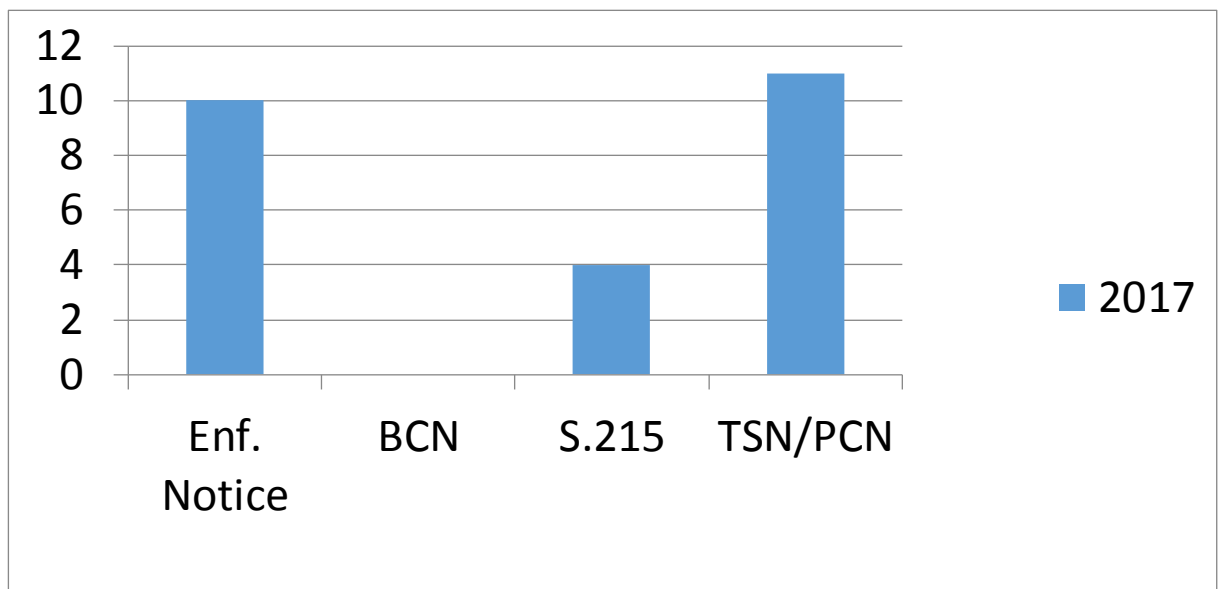
Number of new enforcement cases



Outstanding cases (current caseload)



The exact current back log as of March 2018 is not currently available but will be a very similar to the position at the end of 2017.



ENFORCEMENT NOTICES SERVED.

(BCN= Breach of condition notice)

(TSN/PCN Temporary stop notice/planning contravention notice)

2.13 The team has been working hard in recent years to reduce the backlog of outstanding cases, however, following a succession of successful years, the position has worsened considerably over the last year. The graph directly above shows 26 Enforcement notices served compared with 24 in 2016. By opening more cases than those being closed, the deficit is now 716 at the end of 2017 compared to 551 in 2016. This effectively results in officers carrying an average of 238 cases in 2017 (3FTE) compared to 137 in 2016 (4 FTE). Cases closed per officer are now 108 per officer compared to 186 per officer in 2016. This represents a reduced efficiency per officer however there are mitigating factors:

- During 2017 the team leader Sam Amoako-Adofo left in March and was not replaced as there was a saving of 1 post attributed to the team that year. The FTE was therefore reduced from 4 to 3.
- Although the deputy team leader tried to manage the backlogs in the section there was little support available from the Development Control Manager for much of the year, who was covering the following vacant posts along with his own post: North Team Leader, Admin Team Leader, Enforcement Team leader, Building Control Team Leader. (The North and Admin team leader posts have only recently been successfully filled)
- At the same time, the enforcement team were also down to 2 officers for a considerable period of the year due to another officer resignation and this resulted in additional backlogs that have been very difficult to reverse.

- When officers have such large caseloads it is difficult to close cases due to the pressure of work from the influx of new cases and the problem is compounded by officer turnover in the section.
- At the same time the admin section (who input cases) also had a recruitment issue (now resolved through additional temps) and another process backlog developed for much of 2017 which has now be inputted into the system, hence the large outstanding total.

2.15 **Staffing structure**

Deputy team leader: Ray Littlefield

Enforcement officer: Corral Henry

Enforcement officer; George Atta-Adutwum

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

Rose Stepanek , Tree officer

Nick Hammick, Tree officer (part time, shared with greenspaces)

- 2.16 The enforcement team (specifically planning enforcement officers) was reduced from 5.5 Officers to 4 FTE in 2009 and then to 3 FTE in 2017 and the tree officers reduced from 2 to 1.5 in 2011. Notwithstanding this reduction the team successfully improved performance and efficiency over recent years due to improved use of technology, increased efficiency and hard work. However, last year there was a significant deterioration in the service for the reasons given earlier in this report.

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

32% 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 type 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 try to reduce investigations. (See below) However, it is recognised that residents and Councillors alike are extremely reluctant to accept that investigations should not be undertaken in every case without any testing and filtering first.

2.18 **Future service enhancements planned**

- **Implement mobile working solutions:** The re-procurement of M3 is progressing and should provide a cloud based solution that will allow appropriate equipment to embed full mobile working.
- **Use of eforms;** these are in the later stages 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.** Its aim will be to reduce enforcement investigations. With 31% of cases resulting in no breach, methods and procedures should 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. In reality there has been very limited collaboration due to pressure of work in all 3 boroughs. There will be opportunities for further collaboration towards potential shared service models in future years.

3 ALTERNATIVE OPTIONS

3.1. Team Structure:

- 3.2. The reduction in staffing over recent years has resulted in an extremely challenging performance issue in the team. Planning enforcement is not a statutory service although is well perceived and received by Councillors and the public alike. The previous scrutiny report gave option of the team being adjusted by removing either the Team leader or the deputy. The saving was taken and the team reduced from 4 to 3. However, efficiencies through technology (mobile working) and readjusted investigation policies have yet to be fully realised.
- 3.3. The previous report concluded there would be extremely challenging issues with regard to enforcement investigations being undertaken in a timely manner by the reduction in staff and this has been realised. Significant efficiency improvements will be required over and above those already implemented. Fully implemented Mobile and flexible working, including the necessary devices needed for investigation, are being fully investigated with a view to implementation. In addition, the re-procured IT M3 system is highly likely to be cloud based thereby facilitating better flexible/mobile working opportunities and efficiencies. Demonstrations with IT suppliers are still on-going but likely to be concluded by April. Response times to certain types of complaint still 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 breach, must be dropped altogether.

Collaboration with Sutton\Kingston

- 3.4. Initial investigations 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 could be realised.

3.5. Due to the backlogs, the section is looking at utilising a new contract with Capita which is being entered into to undertake a small proportion of planning application assessments. Assistance may be sought to assist with the Enforcement backlog subject to funding.

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