

Committee: Sustainable Communities Overview and Scrutiny

Date: March 2019

Wards: All

Subject: Planning and Enforcement update

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Martin Whelton

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Recommendations:

- A. To note the performance and nature of the Development Control and Enforcement Service and comment as appropriate. Focus on operational capacity, performance and the challenges facing the service
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report sets out the performance of the Development Control Section (section 1) and the Planning Enforcement Team (section 2). The report sets out the nature of each service and details the performance of the service areas and the on-going work to improve the quality and efficiency of the Development Control and Planning Enforcement Teams

2 DETAILS

2.1 DEVELOPMENT CONTROL

- 2.2 This section of the report sets out the performance of Development Control in the context of the work undertaken by the service. Following high performance outcomes from 2013 to 2016 the team's performance for 'other' applications dropped during 2017, although the threshold for any direct intervention from Central Government was avoided. The government 'blends' minor and other application performance with a combined target of 70% to be decided on time. Merton avoided that figure during 2017 (71%). Major applications are defined as generally 10 residential units or more, Minor applications are generally 1-10 residential units and other applications are generally householder extension and other small applications
- 2.3 As set out in this report, the reasons for the decline were specific, were identified and a plan of action instigated to improve the team's performance. This plan has been successfully implemented and the performance of the team has now significantly improved during 2018 and is continuing.
- 2.4 The teams Target Operating Model highlights a number of key actions over the next 2 years to maintain high performance, including a new upgraded cloud based IT system with improved reporting, more flexible working, potential team

restructuring and a continued recruitment drive to replace temporary workers with permanent staff. It is also proposed to establish the optimal delivery of major's schemes in the borough.

- 2.5 The reason for the reduced performance in 2017 was fully recognised and measures were put in place to ensure it is avoided in the future. In summary, it was due to recruitment difficulties and staffing shortages especially at team leader level. Although nationally the performance was easily at an average level for that year the Borough had one of the worst performances within London. The significant improvement is demonstrated by the continued improved performance figures. This programme is considered to be sustainable in the medium term with current staffing levels.

Performance

- 2.6 With significantly rising application numbers from 2011 to 2016 performance was relatively well maintained. Numbers have now stabilised at a relatively high level compared to historic numbers earlier in the decade

APPLICATION NUMBERS

Year	Total number of applications (including trees and prior approvals)	Major (over 10 resi units or 1000m2 commercial)	Minor (1-9 resi units)	Others (including householders, LCD's , prior approvals excluding trees)
2012	3215	49	296	1562
2013	3882	26	314	1945
2014	4361	28	362	2243
2015	4451	30	375	2301
2016	4530	35	380	2380
2017	4298	36	378	2308
2018	4245	38	380	2350

PERFORMANCE FIGURES

	% Majors in time	% minors in time (target 65%)	% others in time (target 80%)
2012	51 (50% target)	59	81
2013	32 (50% target)	65	84
2014	45 (50% target)	53	82
2015	51 (50% target)	61	85
2016	75 (60% target)	66	87
2017	71 (60% target)	67	77
2018	79 (60% target)	82	88
2019 (6-3-19)	100	84	92

(There were no Gov't penalties for failing to meet major's targets prior to 2015)

- 2.7 As the table above demonstrates, performance has been consistently maintained and improved with the exception of 'others' in 2017. This had a significant impact as others makes up the vast majority of all applications (around 85%) and the overall performance therefore fell that particular year. It is also recognised that other authorities have also improved overall performance in recent years resulting in performance tables being much more competitive. Application numbers dipped slightly in 2017 following record levels in 2016 and stabilised at that level in 2018. Numbers for 2019 so far look to be very slightly down on 2018 (5%) but this can change as it is very much economy dependant.
- 2.8 In the past, the Planning Advisory Service has established methods of comparing volumes, performance and efficiencies between Boroughs. However, there has been no such work undertaken in the last 3-4 years. This is because of the recognised overall improvement in performance and efficiency by all authorities. Although there is therefore no recent data, Merton came out very favourably when reviewed against Wandsworth, Sutton and Kingston as part of a shared service reviews (2014-16) both in terms of performance against national targets and efficient working methods.
- 2.9 It is also relevant that some authorities focus purely on performance statistics at the expense of quality outcomes and customer care. One method adopted is to simply refuse to negotiate and just refuse applications to keep performance high. However, in line with Government advice in the National Planning Policy Framework, Merton's Development Control team negotiates quality outcomes but does so in a pragmatic and efficient manner. This is demonstrated by our success rate in defending appeals. Over the last 4 years Merton has consistently met and exceeded the 65% success rate in defending appeals.
- 2.10 Merton has a robust method of monitoring performance in the planning team. Email reports are sent to team leaders on a weekly basis identifying when case deadlines are expiring. Officers also have expiry dates on the front of all files and team leaders generally meet weekly with staff to identify any issues that may arise both in terms of performance and also quality of outcome. The performance issue in 2017 was absolutely identified throughout the year and senior management informed directly. The main problem was not being able to get the relevant staff recruited to deal with it and this is one of the main reasons for introducing the more flexible Capita contract recently utilised. Capita provided a small officer resource to deal with householder applications.
- 2.11 It is acknowledged that there have been issues in recent years around customer care in terms of phone answering, rising customer's complaints and the processing of applications. The ombudsman has asked for improvements in 2 particular cases and improvements have been made with some retraining in the team. On-going work to improve customer service is underway.

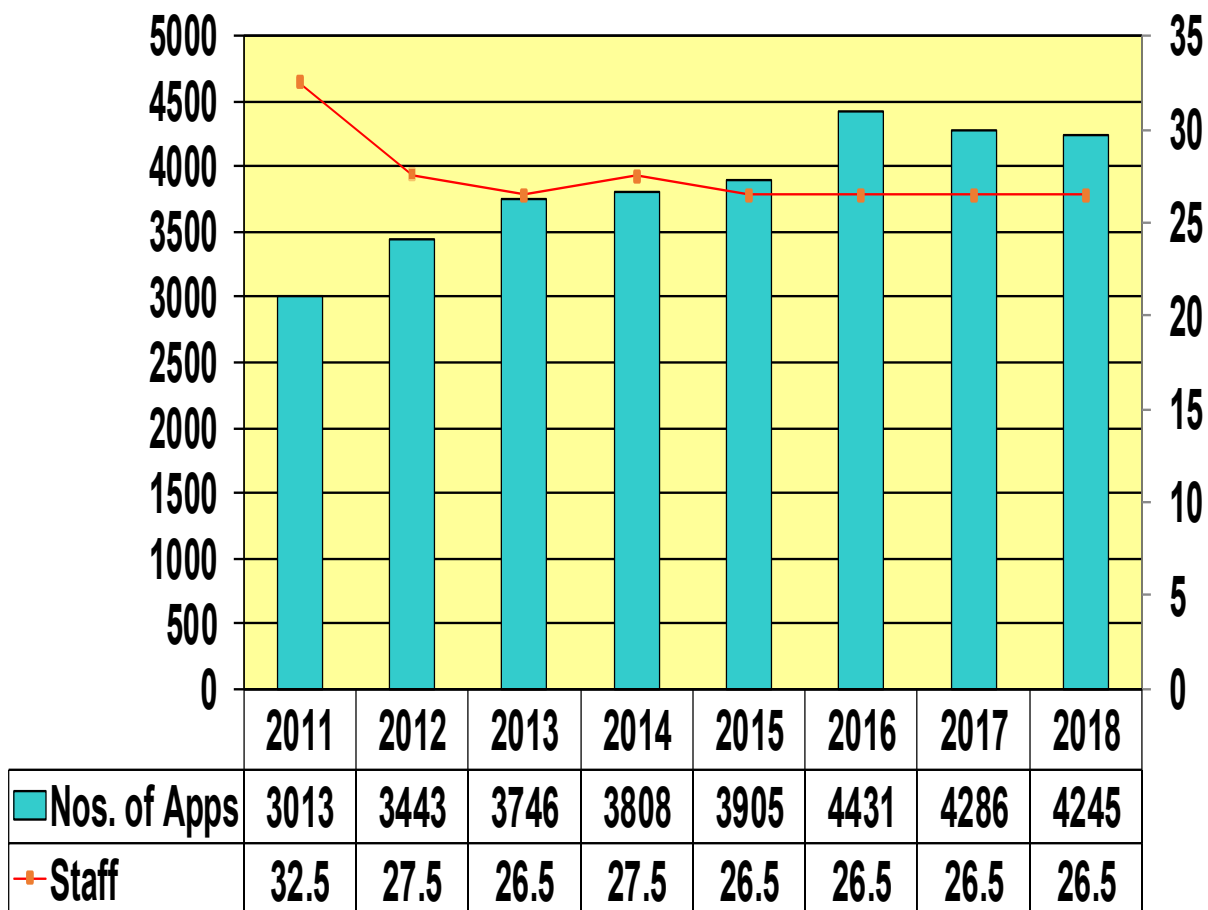
People

- 2.12 Staff numbers have reduced over the last 10 years. This demonstrates a significant efficiency improvement for the team as there are now more

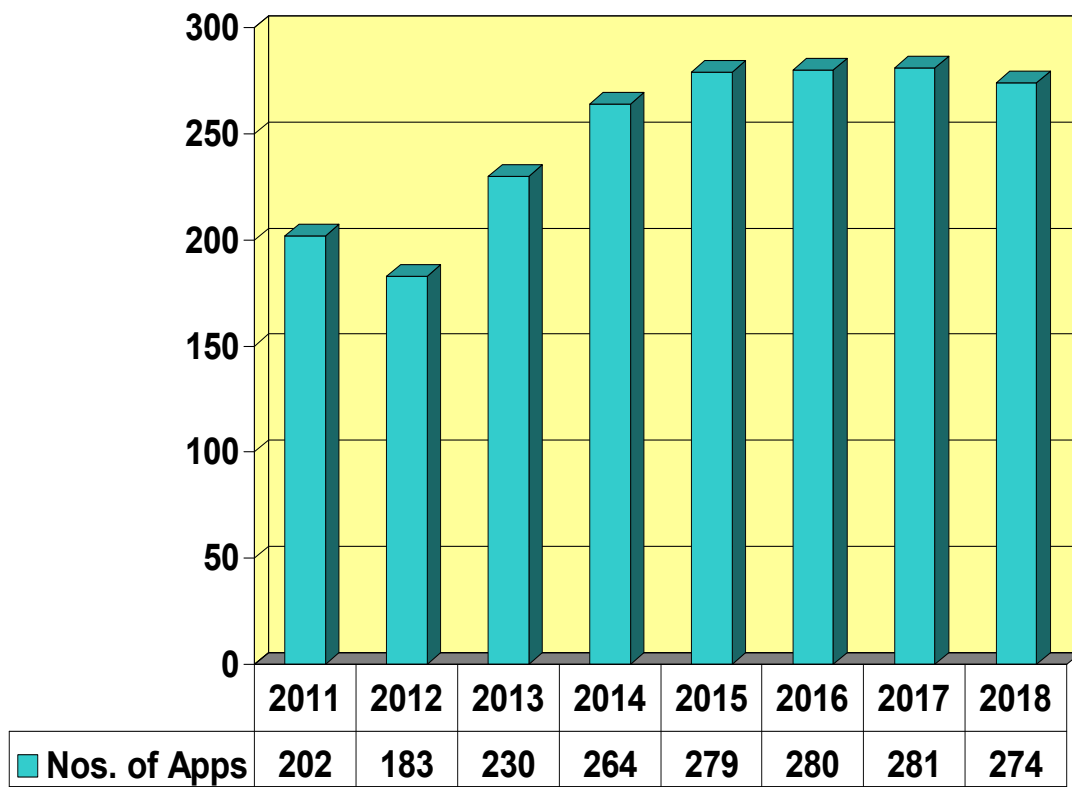
applications than in historic years. In recognition of the rising workloads, the team has had some additional resources allocated slightly above that reduced establishment in recent years. This has resulted in an elimination of admin backlogs, a significant impact on pre application response times and improvement of planning application performance along with improved contact ability.

2.13 Savings identified in very recent years have been reversed in recognition of the increases workloads in the team. It is also now accepted that the additional income successfully secured through Planning Performance Agreements must be reinvested in the team to deliver the promised timely outcomes for major planning applications which contribute to the regeneration of the Borough. At the same time, the government introduced a 20% rise in planning application fees in May 2018 with the stated requirement that the resource must be used to improve planning services. This increase has been applied to Merton's Planning fees.

Planning applications and staffing



Average Planning Applications per planning officer



2.14 During 2017 it is recognised that there was a specific set of circumstances which led to the dip in performance on 'other' applications. The legacy of continuous shared service reviews with Wandsworth and then Sutton/Kingston during 2014-16 resulted in an effective freeze on permanent recruitment. This resulted in almost 50% temps in the team with continuous turnover of temporary staff a real issue. This was recognised and is on the way to being resolved with only 20% temps now in the team. At the same time a contract with Capita was entered into to provide resilience in times of high demand.

2.15 At the start of 2017 the north team leader and enforcement manager resigned. During the majority of the year the team were without those 2 management posts. In addition there was no Admin Manager nor Building Control Manager. Whilst it was abundantly clear that recruitment at all levels was urgently needed the management capacity to do so was severely restricted. This, along with the reliance on temps impacted on performance. The process of improvement therefore took longer than anticipated but is now moving well towards resolution. 10 permanent posts were filled during 2017/18 to replace temps.

2.16 Service improvements/Challenges

The TOM is the delivery mechanism for delivering improvements to the service.

- 2.17 The M3 Northgate system is a bespoke case management solution that needs constant supervision and administration. There have been significant successful upgrades to the servers and the system performance has been improved. The system is in the process of an upgrade at the moment. However, a much more significant upgrade to the cloud based 'Assure' M3 platform is expected during 2019 subject to the business case. This will allow more remote, mobile, electronic working solutions. Every opportunity will be taken to translate any efficiency savings into actual savings.
- 2.18 The same new upgraded system will improve the ease of establishing a suite of bespoke performance reports. Although the current reports are adequate for performance management purposes with all officers having advance warning of the expiry of applications, there will be opportunities to adjust requirements accordingly for the benefit of the team and others.
- 2.18 Challenges for the future revolve mainly around the IT improvements mentioned above which should facilitate a paperless office and more mobile/remote working. As always Central Government legislative changes can impact on the service and Development Control is adept at adapting accordingly. Similarly the section adjust its staffing accordingly in response to any economic changes which may impact on application numbers

3 ENFORCEMENT

- 3.1 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.
- 3.1. Given this, the enforcement of planning control is a key area of priority for the Council and its stakeholders.
- 3.2. 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.
- 3.3. 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;
- 3.4. 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 minor or technical breach of control which causes no harm to amenity in the locality of the site.

3.5. 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.

3.6. 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.

3.7. 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

3.8. 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.

3.9. The following examples are not normally breaches of planning control and it is unlikely that enforcement action can be taken using planning powers:

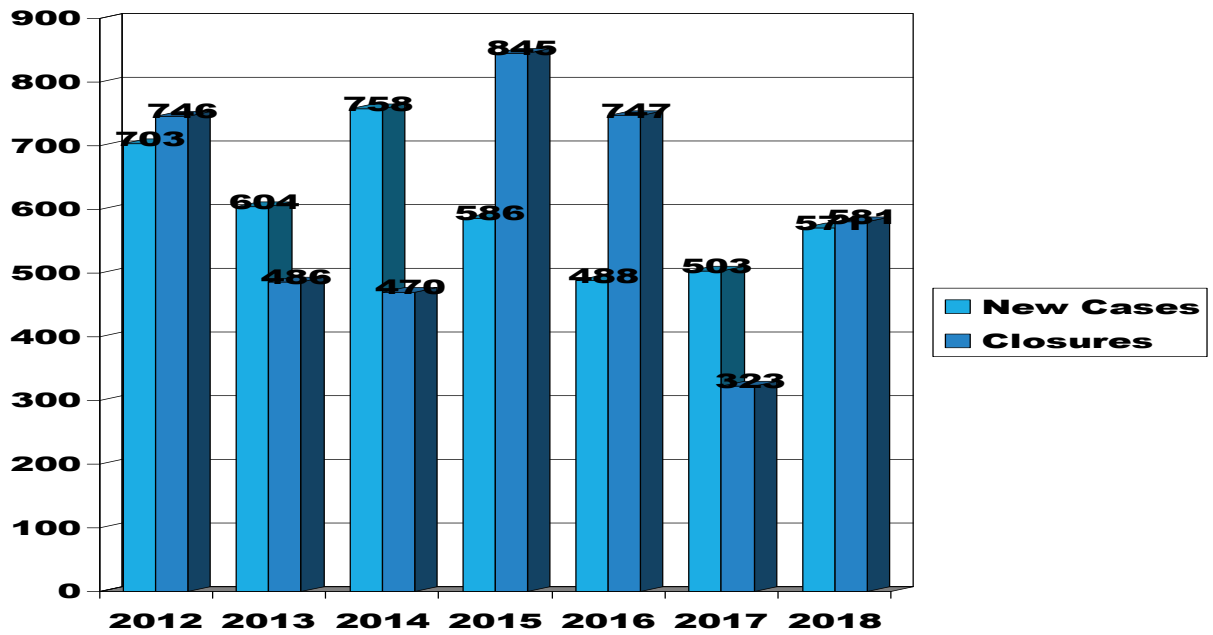
- street parking of commercial vehicles in residential areas
- sale of vehicles from the highway
- operating a business from home in certain cases
- clearing land of bushes and removing trees provided they are not subject to a Tree Preservation Order and are not within a Conservation Area.

3.10 Planning enforcement will not investigate the following:

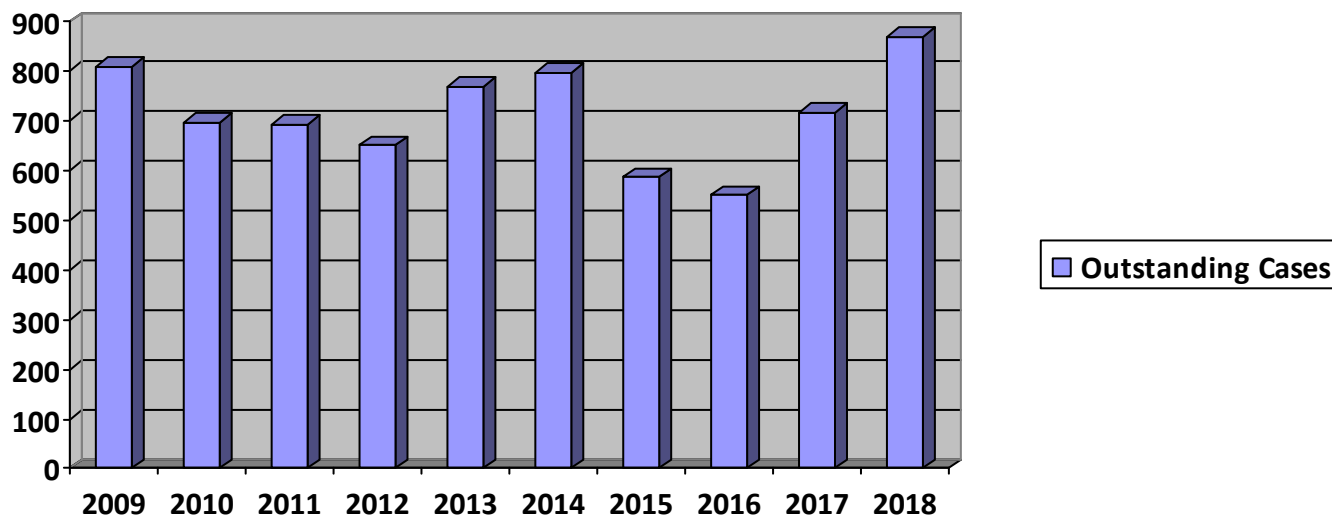
- Neighbour disputes – private not council matter (PNCM)
- Land boundary or ownership disputes - PNCM
- Work to party walls – PNCM. The Party Wall Act (1996) produced by the Government, gives relevant advice.
- Smell, noise and pollution (unless related to a breach of condition attached to a planning 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.

3.11 Current performance of the Planning Enforcement Team

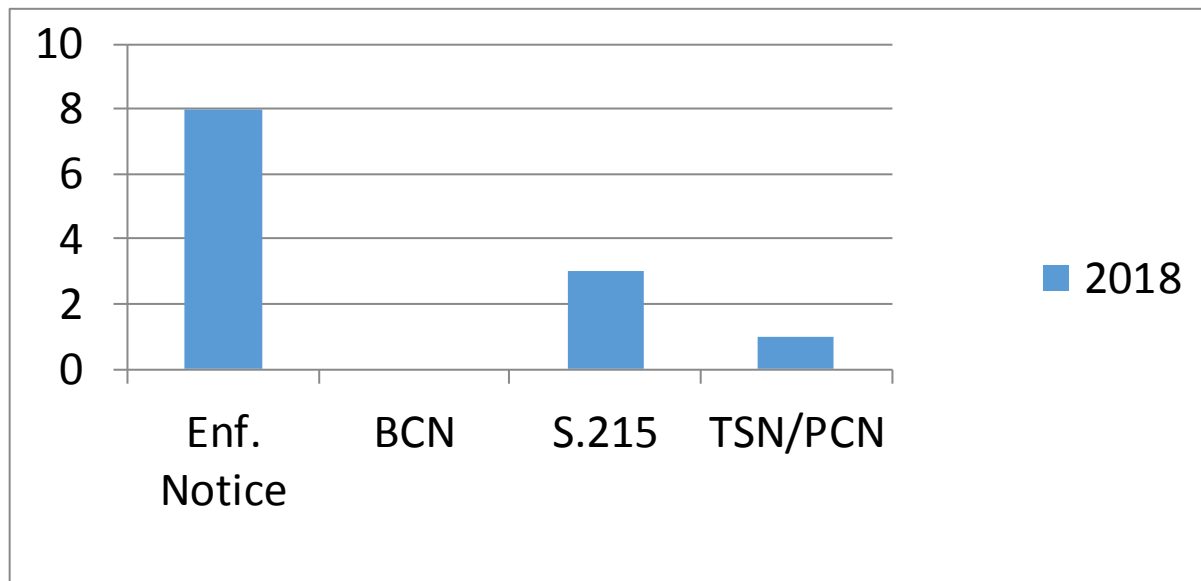
Number of new enforcement cases



Outstanding cases (current caseload)



ENFORCEMENT NOTICES SERVED. (26)



(BCN= Breach of condition notice)

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

3.12 The team were successfully reducing the backlog of outstanding cases up until 2016, however, the position has worsened over the last 2 years. By opening more cases than those being closed, the deficit is now 868 at the end of 2018 compared to 716 in 2017. This effectively results in officers carrying an average of 289 cases in 2018 (3FTE) compared to 137 in 2016 (4 FTE). Cases closed per officer have improved from 108 per officer in 2017 to 193 per officer in 2018. However, it must be noted that a number of historic cases were closed in 2018 and this does skew the closure figures slightly, whereas in reality the performance will not be that much improved. It is still not possible to review how many cases are over 6 months old due to the IT system being operated although the IT supplier has been asked to create a bespoke report. This is being chased. Overall there are a number of factors as to why enforcement is a challenge at present:

- The team leader left in March 2017 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 in 2017 there was little support available from the Development Control Manager for much of that year due to workloads and vacancies within the team. The North and Admin team leader posts have now been successfully filled and the Development Control Manager has had some capacity to become more involved in enforcement during 2018/19 in the absence of a team leader.
- The enforcement team were also down to 2 officers for a considerable period of 2017 due to another officer resignation and unsuccessful recruitment and this resulted in additional backlogs that have been very difficult to reverse. However, the team had 3 officers for most of 2018, hence the much improved performance

- In any event, 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 was compounded by officer turnover in the section.
- Within the last year there have been 2 separate job advertisements for an enforcement officer and there has been no successful candidate selected. The team therefore retains a temp as the third member of staff.
- As a method of trying to deal with the back log, a relatively low number of cases are now allocated to Capita via contract with them. This has certainly assisted but is being monitored to ensure they provide a suitable standard of caseload work.

3.13 Staffing structure

Deputy team leader: Ray Littlefield

Enforcement officer: Corral Henry

Enforcement officer; (Temp) Ross Parson

Capita: Brett Sinclair and Sade Olokodana (around 1 day per week each)

The Enforcement team also includes 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)

- 3.14 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 and increased efficiency. In 2017 there was a significant deterioration in the service for the reasons given earlier in this report, however, new working methods and utilising the Capita contract has improved general performance.

3.15 Analysis of current the caseload of complaints in Merton

Around 30% 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.

3.16 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 for more efficient site visits.
- **Use of eforms;** there is a delay on implementation and further input is being provided by the business support team. 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 around 30% 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 2015/6. 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.
- **'Enforcement' day**

On 28 February 2019 the entire Development Control Team including planning and enforcement officers, spent a full day assisting with the enforcement backlog. Each officer was allocated 6-7 cases, with 115 site in total. Initial indications show that the day was a success with around a third of the cases likely to be closed. Those not closed will go back to the enforcement team for further investigation and whilst this adds to the direct workload it is the most immediate method of ensuring sites are visited within a reasonable time period. Once the results of the day are finalised a decision will be made to see if another should be arranged.

4 ALTERNATIVE OPTIONS/FUTURE CHALLENGES

4.1. Team Structure:

- 4.2. 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 the 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 and there is therefore no team leader. However, efficiencies through technology (mobile working) and readjusted investigation policies have yet to be fully realised.
- 4.3. 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 still being fully investigated with a view to implementation. In addition, the re-procured IT M3 system will be cloud based thereby facilitating better flexible/mobile working opportunities and efficiencies. Demonstrations with IT suppliers are still on-going. 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 demonstrated that there is likely to be no breach, may be dropped altogether.

4.4. Cross Department working

4.5. 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.

5 CONSULTATION UNDERTAKEN OR PROPOSED

5.1. None

6 TIMETABLE

6.1. None

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

7.1. None

8 LEGAL AND STATUTORY IMPLICATIONS

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

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

9.1. None

10 CRIME AND DISORDER IMPLICATIONS

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

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

11.1. None

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

None

13 BACKGROUND PAPERS

13.1. None

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