

Committee: Council

Date: 17 November 2021

Wards: ALL

Subject: Strategic Theme Sustainable Communities - Enforcement

Lead officer: Director of Environment and Regeneration, Chris Lee

Lead member(s): Cabinet Member for Local Environment and Green Spaces, Cllr Natasha Irons; Cabinet Member for Culture, Leisure and Skills, Cllr Brenda Fraser; Cabinet Member for Housing, Regeneration and the Climate Emergency, Cllr Martin Whelton; Cabinet Member for Partnerships, Public Safety and Tackling Crime, Cllr Agatha Akyigyina and the Cabinet Member for Adult Social Care and Public Health, Cllr Rebecca Lanning

Contact officer: Assistant Director of Public Space, John Bosley

Recommendations:

A. The Council review and consider the content of the report.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The following report provides an overview of the current policy, practices and performance in the area of enforcement to support Sustainable Communities within the Council.
- 1.2. The portfolio holders are the Cabinet Member for Local Environment and Green Spaces, Cabinet Member for Culture, Leisure and Skills, Cabinet Member for Housing, Regeneration and the Climate Emergency, and the Cabinet Member for Partnerships, Public Safety and Tackling Crime. The Sustainable Communities Overview and Scrutiny Panel continues to exercise its statutory function in relation to environmental sustainability (including energy, waste management, parks and open spaces, air quality and the built environment), enterprise and skills (including regeneration, employment, adult education and libraries), housing and transport.
- 1.3. The Council has a number of service specific enforcement policies. These set out the principles and approach based on relevant objectives and legislation, this includes the principle that there is 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. This is supported by one overarching enforcement policy to enable consistency and transparency across enforcement activities carried out by the council. - [Overarching Enforcement Policy](#)
- 1.4. A new Officer group is being established to help better coordinate the intelligence and the response to enforcement needed particularly where there are hot spots in the borough.

2 DETAILS

- 2.1. The use of enforcement is a fundamental tool to enable and support the delivery of improvements in our local environment in order to deliver safe, clean and green local communities. However, the use of enforcement should be measured and delivered proportionately, often not being the first course of action. The principles of providing assistance, information to and engagement with service users and stakeholders prior to formal engagement is undertaken is outlined in the Enforcement Concordat which was adopted in April 2005 and follows best practice advice issued nationally.
- 2.2. Following these principles, enforcement is undertaken when the offence is serious in context of the legislation being enforced and / or the offence or contravention has occurred or continues to occur following advice, warnings or formal notice by the council. This approach is further detailed in the Council's Overarching Enforcement Policy, stating 'in most circumstances the council will enforce against or prosecute those who neglect or wilfully fail to comply with their legal obligations such as where there is a risk to individuals or the public, or where action is required to minimise adverse environmental impacts or against individuals who engage in benefit fraud.'
- 2.3. The management of Officer authorities to enforce on behalf of the council is managed through the department's scheme of management which allows a chief officer to clearly define the decision-making rights of those who exercise and have enforcement responsibilities for the council.
- 2.4. The concentration of work areas that have applicable enforcement powers conferred through legislation enables the service areas to protect the public, ensure the safe and fair use within the public realm, protect our environment and addresses ASB within our communities. The enforcement powers within the council also facilitate improved coordination with key stakeholders such as the Police and the LFB.
- 2.5. However, a primary focus for service areas is to work toward obsolescence as prevention is a key component of success and the advice and support provided to service users is a vital ingredient in achieving compliance. The Legislative and Regulatory Reform Act 2006 requires the council to have regard to the five Principles of Good Regulation when undertaking regulatory functions.
- 2.6. These include:
 - **Proportionate** – the level of enforcement should reflect the level of risk to the public and enforcement should reflect the seriousness of the offence.
 - **Accountable** – enforcement activities should be open to scrutiny and supported by agreed policies and procedures
 - **Consistent** – in both the information we provide and the support that is given, the council will use best endeavours to act in similar ways to other neighbouring authorities and under the guidance of best practice advice.
 - **Transparent** – the council shall ensure that those subject to regulation are able to understand what is expected to achieve compliance.
 - **Targeted** – our enforcement resources will be focussed on higher risk activities, reflecting both local need and our agreed priorities.

- 2.7. The past 18 months have significantly impacted on the issue of enforcement both in terms of the demands placed on services and in terms of the capacity available to deal with issues. Some demands have increased whilst some have reduced. Restaurants and pubs, for example, had altered or changed their business model to shift to off-sales, click & collect and online delivery models. This caused a challenge for enforcement officers who had to identify those businesses still trading and ensure it was done so in a safe & complaint manner. Vehicular movements across the borough have been reduced, whilst fly-tipping has increased significantly, both from a local and a national perspective. Capacity has also been stretched, with staff being redeployed to deal with other activities for periods of time to help with the response to the pandemic. Additional workloads were also presented during the pandemic such as compliance with the Covid-19 legislation and guidance which substantially increased workloads for frontline officers.

3 THE LEGAL FRAMEWORK TO ENFORCEMENT

- 3.1. The legal frameworks that support the regulatory and enforcement functions undertaken by the council are extensive, nuanced and often complex. During the last review, there were 140 identified examples of Acts of Parliament and regulations that both place a duty on and empower the council to enforce.
- 3.2. It is by the sheer number and multi-faceted nature of these powers that council enforcement functions can become strained. In many service areas the enforcement function is not the primary business, but a tool which can be used to achieve compliance and minimise risks to our community and service users in pursuit of agreed outcomes.
- 3.3. Following the principles as outlined in the Council's Overarching Enforcement Policy; actions that are delivered by enforcement need to have sufficient supporting evidence to prove that there was a breach of legislation upon which enforcement action can be taken.
- 3.4. All investigations undertaken are required in accordance with the requirements set out in the following legislation, as amended, and any associated guidance or codes of practice applicable to the service area.
- Police and Criminal Evidence Act 1984 (PACE)
 - Criminal Procedure and Investigations Act 1996
 - Criminal Justice and Police Act 2001
 - Human Rights Act 1998
- 3.5. In gathering evidence, the Council may undertake recorded interviews under caution. These are carried out in accordance with PACE and associated Codes of Practice providing an alleged individual or business with the opportunity to explain the alleged offence and/or put their version of events as part of an ongoing investigation.
- 3.6. Where an investigation involves gathering information covertly, this must be undertaken complying with the procedures and protocols laid down within the Regulatory Investigation Powers Act 2000 (RIPA), as applicable.
- 3.7. During an investigation the type of evidence or intelligence gathered can be wide ranging and may include one or more of the following:

Computer Records and open source investigations including information from:

- Photographs
- Social media websites
- Communications data
- CCTV images including body camera footage
- Paper Records
- Samples (food, water, environmental, counterfeit goods)
- Equipment
- Plans or sketches made at the scene
- Noise recording records
- Invoices
- Witness Statements
- Expert reports
- Forensics (including forensic examination of electronic devices)
- Information from other agencies
- Interviews from residents and businesses

3.8. Where non-compliance is identified and in line with the Council's Overarching Enforcement Policy, we will seek compliance through a combination of approaches as outlined below.

3.9. Communication and promotion. This is typically service specific information and involves the dissemination of information to residents and businesses about particular legislative requirements/obligations through targeted campaigns, via our website or through direct communications to specific groups or residents.

3.10. The objective of such communication is to raise awareness of the compliance advice, guidance and support that is available and provide an opportunity for/encourage compliance to avoid more formal enforcement action. In some instances, the advice can be in the form of a warning letter, which is meant to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further action. The recording of these interactions ensures that if a similar failure is identified in the future, the appropriate follow up enforcement action can be deployed to secure compliance.

3.11. The types of possible enforcement actions, including warnings and formal actions, that maybe utilised by service areas dependant on the legislation involved are:

- Informal warning or advice
- Community Protection Warning or Community Protection Notice
- Service of a Fixed Penalty Notice for some contraventions where permitted by the legislation

- Formal Statutory Notice
 - Works in Default
 - Revocation / variation of a licence or authorisation
 - Prohibition of a premises, process or equipment
 - Civil penalties
 - Formal Caution
 - Prosecution in the Magistrates' Court, or Crown Court for more serious offences
 - Civil Injunctions
 - Enforcement Orders
 - Premise closure powers
- 3.12. Formal enforcement actions include a wide variety of sanctions including statutory (legal) notices, written undertakings, the refusal to grant or the revocation of an existing licence or registration, fixed penalty notices, powers of seizure and detention, cautions and prosecution.
- 3.13. Where formal enforcement action constitutes a criminal offence, the Council may, where the legislation permits, issue Fixed Penalty Notices (FPNs) as a means of dealing with an offending instead prosecuting. For example, certain environmental offences such as littering, dog fouling and small-scale fly-tipping (i.e. black refuse sack) are subject to FPNs. The offender may discharge their liability for the offence and avoid prosecution and a criminal record by paying the fixed penalty.
- 3.14. The Council will comply with any current relevant guidance on the use of FPNs whilst ensuring that sufficient evidence to give a realistic prospect of conviction in lieu of payment of the FPN is secured. The services will also consider the seriousness and frequency/prevalence of the offence in ascertaining the appropriateness of the serving of a FPN as compared to pursuing a prosecution.
- 3.15. Statutory (legal) notices are also utilised by services to ensure that offenders achieve compliance with legal requirements. A statutory notice will require a person, business or organisation to comply with specific requirements within a specified time period. The notice will identify the legislation contravened, the steps or action required to remedy the contravention to comply with the notice and the consequences of non-compliance. The notice will ordinarily also set out any statutory rights of appeal. In general, non-compliance is a criminal offence rendering the person served liable to prosecution.
- 3.16. The Council may also be empowered to undertake works in default to secure compliance and the necessary remedial action. Where the Council exercises its default work powers its reasonable expenses are recoverable from the person in default.
- 3.17. As an alternative to prosecution, and in appropriate circumstances, a simple caution may be considered as a means of formal enforcement action. A caution is not a criminal conviction but it will form part of an offenders' criminal record and may be referred to in any subsequent proceedings.

- 3.18. Proceeds of Crime- There are some cases where an application under the provisions of the Proceeds of Crime Act 2002 is considered appropriate. This seeks to confiscate assets from an offender in order to recover the financial benefit they have gained during the course of their criminal activities. Where this is considered appropriate to avoid the dissipation of the criminal benefit from the offending was the investigation/prosecution runs its course the Council may seek restraint order effectively freezing the alleged offender's assets.
- 3.19. The Council utilises a range of powers, which are civil in nature. Civil enforcement has a lower evidential test to prove the case – on the balance of probability as opposed higher criminal standard of beyond reasonable doubt. Breaches of these civil orders can become criminal offences or a contempt of court empowering the court to impose a custodial sentence and/or a fine and/or the sequestration (seizure) of assets.

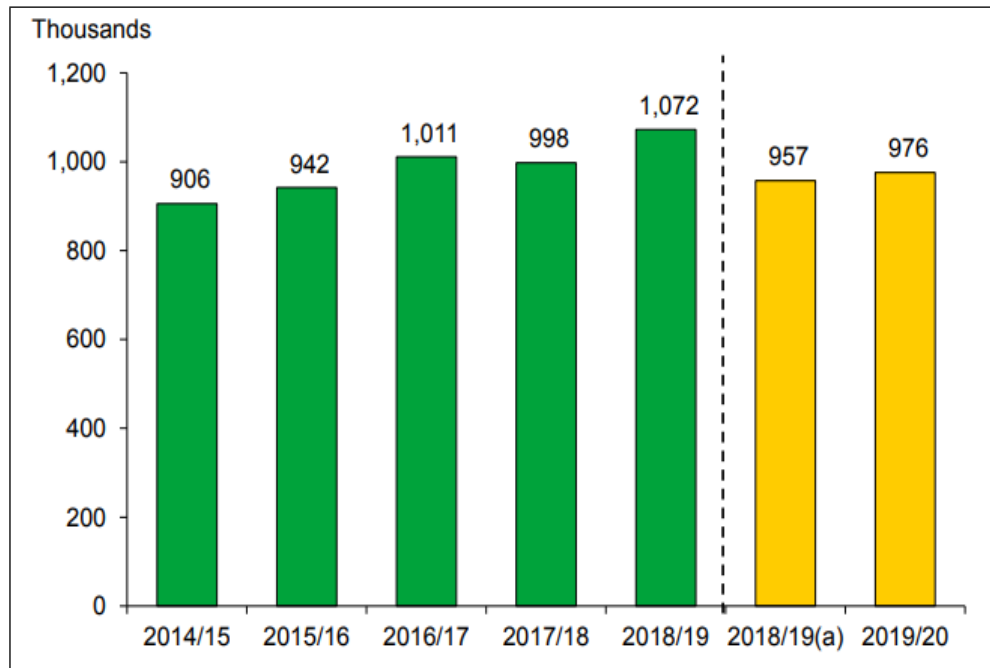
AREAS OF SERVICE WITH AN ENFORCEMENT FOCUS

4 WASTE AND STREET ENVIRONMENT

- 4.1. Waste within the public realm and, in a limited way, on private land is managed through the Waste Enforcement Team. The Council acts as both the Waste Collection Authority and the Waste Disposal Authority, which allows the control of how waste is managed, from containment, collection and even disposal to limit the impact on the local environment.
- 4.2. These powers are useful in tackling blighted areas within our communities that suffer from the improper storage of or a lack of a professional waste management service to dispose of waste generated from businesses and residential properties.
- 4.3. In addition, the service is exploring options to better utilise powers to address enforcement issues on private land. This requires collaborative working with Planning colleagues to utilise powers under the Town and Country Planning Act (TCPA, s.215). Most recently, this approach was used in Tamworth Lane to deal with deficiencies on private land that was impacting on the local amenity.
- 4.4. The two primary focus areas within enforcement that relate to the waste service involve fly-tipping and littering.
- 4.5. Fly-tipping is the common term used to describe waste illegally deposited on land without an environmental permit. The offence of fly-tipping and the additional offences of 'knowingly causing' or 'knowingly permitting' fly-tipping are set out in Section 33(1)(a) of the Environmental Protection Act 1990. Fly-tipping is a criminal offence that is punishable by up to 12 month's imprisonment and/or an unlimited fine if convicted in a Magistrates' Court. On conviction on indictment before the Crown Court a term of up to five year's imprisonment may be imposed, or an unlimited fine, or both. There are also additional sentencing powers enabling the Court to forfeit vehicles used in to commission of such offences.
- 4.6. Locally, the prevalence of fly-tipping incidents has been on the increase and is comparable to the national increase that has occurred over the last few

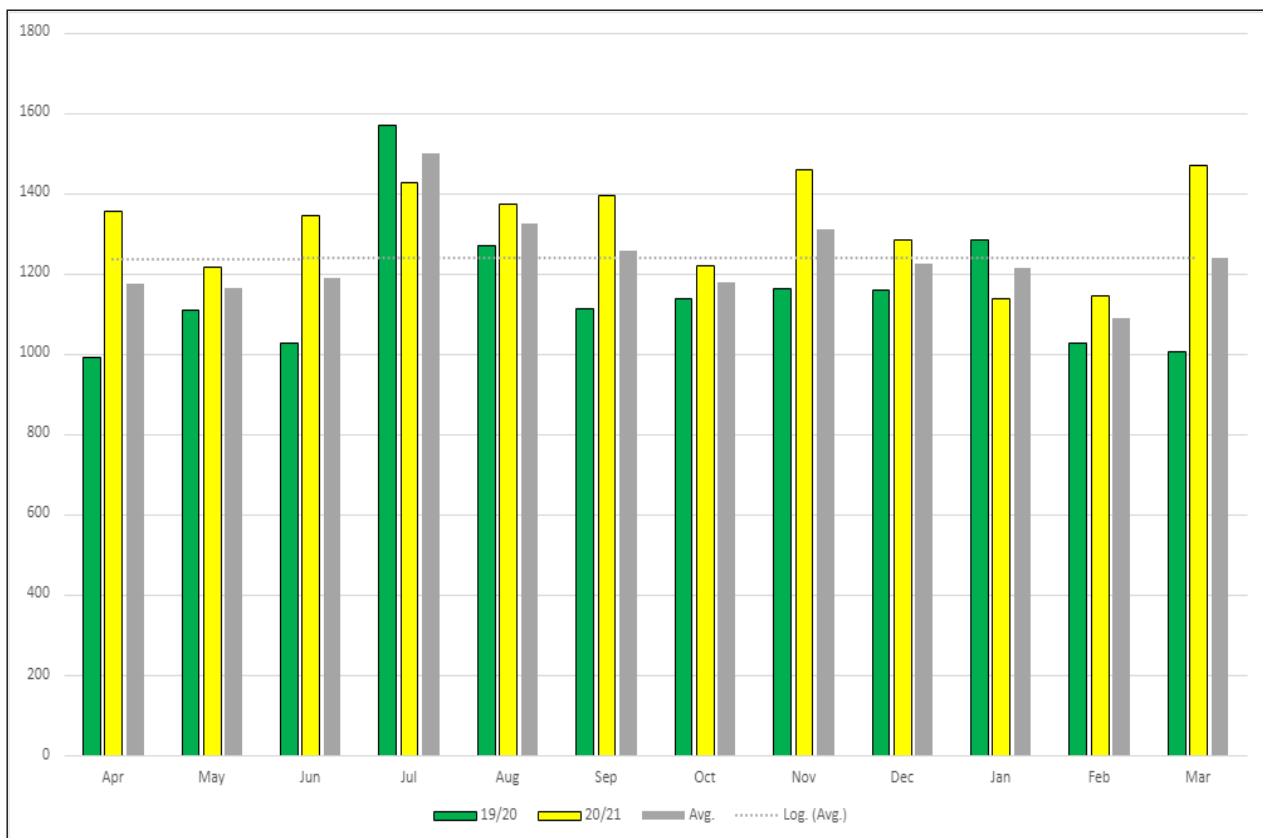
years. More recently during the pandemic, there has been a perceivable increase in fly-tipping, both regionally and nationally.

Fig. 1 – Fly-tipping incidents recorded Nationally (April 2014 to March 2020)



Note: the 2019/20 national totals for fly-tipping incidents are not comparable to earlier years due to methodological changes. These methodological changes have been applied to 2018/19.

Fig. 2 – Merton Fly-tipping incidents (last two full municipal years)



- 4.7. In 2019, the Council agreed a Fly-tipping Strategy with the primary aim of aligning our approach in tackling fly-tipping, not just through efficient and targeted enforcement but through wider engagement with service partners, community groups and stakeholders. The goal of the strategy is to provide an overall reduction in fly-tipping incidents and an improved satisfaction of our residents regarding the cleanliness of the streets within their communities. The main strands of focus within the Strategy to enable the delivery of improvements are -
- Early intervention – education, communication and engagement
 - Preventing reoccurrence – operational service and target hardening
 - Targeted enforcement – FPNs, prosecutions & vehicle stops
- 4.8. Littering is one of the most prevalent and significant environmental crimes that is affecting our community. There is no statutory definition of littering, but it is considered to include the improper discarding of waste materials, with the four most littered items being smoking items, confectionery packaging, drinks containers and fast food packaging. The effects of litter impact on people’s perceptions of safety and wellbeing as well as contributing negatively to the cleanliness of the public realm.
- 4.9. In Merton, the direct enforcement of these issues is delivered through a mixed solution of an ‘in house’ enforcement team and through the use of a service provider (Kingdom Security). This integrated approach allows the service the capacity and focus to both support a broad litter enforcement presence whilst retaining the knowledge and expertise to support waste engagement advice and support, formal investigations into fly-tipping incidents with a focus on prosecutions and allows for the delivery of multi-agency operations (e.g. vehicle stop and searches) to combat illegal transporting of waste. In a support capacity and being developed through the Strategy, the service is working with our partner service providers (i.e. Veolia) to assist in intelligence gathering, both in terms of the locations and modified operational methods that secure evidence that further supports potential prosecutions.
- 4.10. The Council’s waste enforcement team’s duties include not only the enforcement of littering and dog fouling, but the illegal deposit of controlled waste (fly-tipping), graffiti removal, waste 'Duty of Care' checks on commercial and domestic waste producers, investigation of inappropriate black bag placement, 'stop and search' waste carriers checks with police and trading standards, Waste and Dog Fouling awareness and education campaigns and the investigation of all other reported environmental crimes and projects.
- 4.11. In addition, the enforcement team undertake the removal of abandoned vehicles from the Highway and public land. Improvements in the use of the DVLA vehicle enquiry search function (<https://vehicleenquiry.service.gov.uk/>) has enabled residents to report vehicles that are untaxed to the enforcement team. The table below details the volume of reports that the enforcement team has managed during the current year. In addition, the team has scrapped 17 vehicles this year, removing the nuisance vehicles from the Highway.

ABANDONED VEHICLE CASE VOLUMES (2021/22)

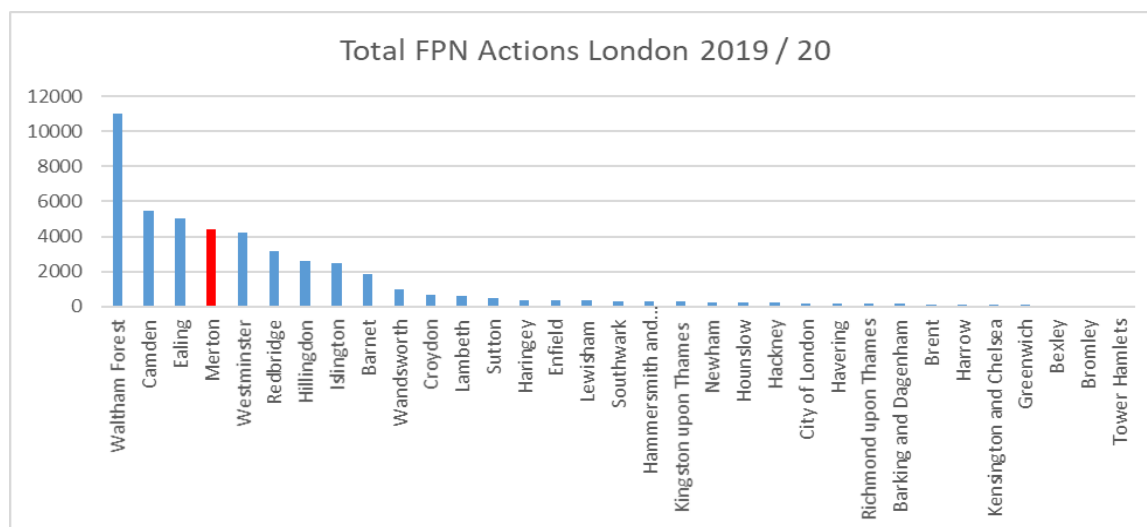
	April	May	June	July	Aug	Sept	Total
PUBLIC LAND	64	75	126	78/	73	71	487
PRIVATE LAND	28	22	28	25	20	27	150
NO DETAILS	33	24	0	37)	40	37	171
TOTAL	125	121	154	140	133	135	808

- 4.12. The role of the Council's enforcement service provider is to provide Environmental Enforcement Services through delegated authority under the Environmental Protection Act 1990, Anti-Social Behaviour Crime and Policing Act 2014 and Clean Neighbourhood and Environment Act 2005. The overall core business of this contract is the patrolling and issuing of FPNs for related environmental offences. The primary purpose of this developing procurement strategy for these services will be to change behaviour towards environmental crime and in particular littering, public urinating and dog fouling. In addition, it is proposed that scope of enforceable functions be increased to include other offences such as, graffiti, fly-posting, dog control offences in parks, abandoning a vehicle, unauthorised distribution of free literature on designated land along with evidence gathering from domestic fly-tipping (abandoned waste).
- 4.13. In March 2022, the environment enforcement contract with the current service provider ceases. We are currently preparing a revised specification for the new service contract as part of the procurement process. In order to drive further improvements and flexibility within the service, we will be working within the department to identify further business opportunities to provide further services within the borough that are focused on enforcement outcomes. One potential area that we are keen to develop is to have the service provider tackle the smaller fly-tipping incidents that are a scourge to our local environment. Utilising the receipts of any FPNs that may be issued, it may be possible to operate this as a contract element which is self-funding. This would provide the borough with further resource to tackle this issue.
- 4.14. As outlined above, the Waste Service team are currently undertaking a pilot programme of work in partnership with the current enforcement provider to commence a proactive communications campaign backed up with fly-tipping enforcement to address the scourge of waste bags that are deposited in local shopping precincts. The enforcement pilot has begun (October 2021) and is focusing on areas which historically have experienced high levels of discarded waste; namely in Graveney, Colliers Wood, Longthorton, Merton High Street and Kingston Road. At the beginning of October, we communicated directly to over 2,500 local household, reminding residents on how to correctly manage their waste along with the Council's zero tolerance approach to fly-tipping. Following this initial engagement with local

households, we have actively started issuing fix penalty notices (FPNs) for fly-tipping. In the first two weeks of the pilot, we have issued 25 FPNs.

- 4.15. The below graph demonstrates our performance within London as reported to the Department for Environment Food and Rural Affairs (DEFRA).

Fig. 3 – London Fixed Penalty Notes issued (Merton highlighted)



- 4.16. As outlined in Fig. 3, the council performs well within London in actively enforcing environmental crimes. It should be noted that use of CCTV in waste enforcement is often limited. The success of our enforcement is primarily driven through evidence gathering which is not reliant on CCTV. However, CCTV is helpful in cases where a motor vehicle is involved and its use can often act as a strong deterrent when used correctly. The service is currently looking at three (3) separate areas to install fixed CCTV cameras to tackle areas that are prone to commercial scale fly-tipping.

- 4.17. Moving forward we will be utilising additional CCTV smart cameras as part of the pilot along with deployable cameras managed by the Enforcement Team, targeting known hot spots. The aim of the pilot, in addition to enforcement when evidence is readily available, is to use images captured from these cameras and publicly highlight these findings on our website in order to seek further evidence from the public to identify CCTV captured fly-tippers.

- 4.18. The covert use of CCTV is strongly regulated through the Regulation of Investigatory Powers Act 2000 (RIPA) imposing strict procedural controls on its use. It is also important to note that past experience and as informed by neighbouring authorities, shows the use of covert CCTV to combat the majority of the lower volume fly-tips which plague our neighbourhoods is limited in its practical effectiveness. CCTV is often better suited for larger scale issues and to gain evidence on location based enforcement, such as the illegal movement or transfer of waste where vehicles are involved.

5 REGULATORY SERVICES PARTNERSHIP

- 5.1. The Regulatory Services Partnership (RSP) is a tri-borough partnership hosted by Merton and covering the boroughs of Merton, Richmond and Wandsworth, serving a population in excess of 750,000. The partnership seeks to protect residents, local businesses, workers and visitors to the

borough through delivering a variety of statutory regulatory functions including:

- Air Quality & Contaminated Land
- Food Hygiene, Food Standards and Health and Safety at work
- Licensing including Street Trading and Markets
- Noise & Nuisance
- Pest Control (Wandsworth only)
- Private Sector Housing (Richmond & Wandsworth only)
- Trading Standards

5.2. The enforcement activities undertaken across all of the RSP's functions are carried out in a proportionate and consistent manner through routine risk-based inspections, response to complaints, licensing regimes and reactive intelligence led interventions. Where breaches of legislation are identified, a graduated approach to enforcement is taken which is intended to:

- ensure that we enforce the law in a fair, equitable and consistent manner
- assist businesses and others in meeting legal obligations without unnecessary expense or time
- focus on prevention rather than cure
- take firm action against those who flout the law or act irresponsibly

5.3. The powers available to RSP Officers include:

5.4. **Informal Warnings** - Where breaches are relatively minor, advice will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. Failure to comply with an informal warning may result in further action being taken

5.5. **Community Protection Warnings & Notices** - A Community Protection Notice (CPN) can be issued to any individual over the age of 16, business, or organisation whose conduct is having a detrimental effect on the quality of life in the local community; persistent; and unreasonable.

5.6. A written 'Community Protection Warning' (CPW) must be issued before a CPN can be issued. CPNs and CPWs are a useful tool in dealing with anti-social behaviour which may not reach the threshold of being a Statutory Nuisance.

5.7. **Statutory Notices** - These are formal notices which specify a significant breach of legislation, what action must be taken to rectify it and a clear timescale for compliance. Failure to comply with a statutory notice is a criminal offence which may lead to prosecution.

5.8. **Prohibition Notices** - There may be circumstances where an imminent risk of injury exists which warrants the prohibition of a premises, activity or piece of equipment. The most common notices of this type are used for unsafe equipment or unhygienic food premises.

5.9. **Simple Cautions** - The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered

unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.

- 5.10. **Prosecution** - A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.
- 5.11. **Injunctions** - Injunctive action is a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.
- 5.12. **Coronavirus (COVID-19) Activity**; the outbreak of coronavirus was an unprecedented and rapidly evolving challenge for The Regulatory Services Partnership. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force on 26 March 2020. Officers from Food and Safety, Trading Standards, Noise Nuisance, Environmental Health and Licensing teams were authorised under the new Covid Regulations and undertook a significant number of advisory visits and inspections to ensure compliance with the Regulations, providing guidance and support to business and taking action where necessary.
- 5.13. The Regulations required business closures (with a few exceptions) of premises selling food or drink for consumption on the premises including cafes, restaurants, bars and pubs. Adjacent seating areas are to be treated as part of the premises. The provision of food and drink for consumption off the premises was permitted.
- 5.14. All types of non-food shops were required to close unless on an approved list or were able to fulfil orders by delivery or without allowing personal access to their premises. The Regulations set out a detailed list of non-food related businesses that must close entirely, including most sports venues, sports courts and gyms; indoor leisure facilities; nightclubs; personal care services such as beauty parlours, nail bars and hairdressers; cultural venues such as cinemas, theatres and museums; car showrooms; and all outdoor markets.
- 5.15. The approved list of business premises allowed to remain open included food retailers, supermarkets; hardware, homeware and convenience stores; off licences; banks, building societies and post offices; laundrettes and dry cleaners; medical centres, pharmacies; vets, pet shops; petrol stations; car repairs; bicycle shops; taxi and vehicle hire; funeral directors; storage facilities; building and agricultural suppliers; car parks and public toilets.
- 5.16. Most businesses complied with the Covid Regulations but unfortunately RSP officers were required to serve a number of Covid Prohibition Notices to shut businesses down and suppress Covid transmission. Examples of Prohibition Notices served included;
- Two barbershops one in Colliers Wood and the other in Morden who were carrying on hair dressing activities behind closed doors.
 - A vape shop in Colliers Wood High street that was allowing customers to enter the shop to purchase vape.

- An eyelash technician in Mitcham who was advertising treatments, carried out at her home, on social media.
 - A Morden Laptop repair shop that was allowing customers into the shop.
- 5.17. In liaison with the Director of Public Health a full direction Order was served under the Coronavirus Restriction (No3) Regulations to close down a Mitcham Shisha bar that was continuing to allow patrons from different households to mix, allowing patrons to share hookah pipes and allowing staff and customers to walk around without face coverings. RSP Food and Safety officers gathered evidence through a joint operation with Mitcham Safer Neighbourhood police officers.
- 5.18. Licensing Officers worked closely with the South West London Borough Command Unit to advise and where necessary enforce with respect to breaches of the Covid Regulations by Licenced Premises. The Licensing Manager arranged weekend duty rotas of Merton Licensing officers and SWLBCU Licensing Officers following significant numbers of complaints from local residents. The RSP served Fixed Penalty Notices on a number of Licensees who had allowed gatherings to take place directly outside their premises.
- 5.19. Officers within the Food and Safety team had relevant experience in investigating food poisoning outbreaks and were redeployed from inspection work to infection control advisory work within care homes and businesses. Officers investigated outbreaks of Covid in all settings including restaurants, food factories, building sites, bus depots and offices. This infection control work was vital to limit the spread of Coronavirus and to raise awareness of infection control measures including increasing ventilation and sanitisation.
- 5.20. **Contaminated Land** - Local Authorities have a duty to ensure that contaminated land within their borough is identified, and where necessary, removed or remediated. The contaminated land agenda has changed over the past 15 years with this function being mainly delivered through the Planning agenda where sites will be required to take action as a condition of the new development.
- 5.21. Officers will ensure that any relevant planning application is assessed and where necessary, request information of any historic land use, and requiring site survey where appropriate. In certain circumstances site cleaning or remediation is required.
- 5.22. The vast majority of sites in the borough have been cleaned over the last 2 decades, however there are still some areas that will require contaminants to be removed. These include some industrial and infrastructure sites. The role of the Council contaminated Land Officer is to oversee this remediation and ensure that with any future use, public health is protected.
- 5.23. This is a risk-based approach that considers the type of pollutant, its impact, and the potential pathway to contamination. Please note that with some sites the responsible authority is the Environment Agency.
- 5.24. **Air Quality** - Air Quality is currently considered as a Public Health priority. The responsibility for tackling air pollution and delivering clean air sits with Local, Regional and National Government.

5.25. Due to exceedances in Nitrogen Dioxide and Particulate Matter, the borough has been designated an Air Quality Management Area. As such the Council has a statutory duty to monitor and report on pollution in the borough and produce and implement an Air Quality Action Plan. As well as occupying a policy, consultancy and a strategic delivery role, the Air Quality Team carries certain regulatory and enforcement functions.



5.26. **The Regulation and Permitting of some Commercial Activities -** Pollution from industrial and commercial sources (installations) is controlled by the Environmental Permitting (England and Wales) Regulations 2010 (EPR) and its amendments. It is the responsibility of the Environment Agency (EA) and Local Authorities (LA) to enforce the Regulations. The EA regulates the most polluting industrial installations under Part A of EPR, and LAs regulate the less polluting installations under Part B and Part A(2) of the Regulations.

5.27. Merton has around 50 Permitted Premises under the council control. These are subject to inspections and a regulatory framework. Premises include petrol stations, dry cleaners and spray-painting facilities.

5.28. **Regulation of some construction activities -** Many large-scale developments are required to take action to protect the local environment, including air quality. This can include the monitoring and reporting of site-specific air pollution.

5.29. The Pollution Team plays an active role in regulating this pollution both as part of its statutory duties as well as the site conditions.

5.30. **Regulation of exhumations -** The Pollution Team are responsible for overseeing the exhumation of bodies. This role is an historic function of the Council and our role is to ensure that public health is protected and that the exhumation is carried out in a sensitive way. Merton have seen an increase in the number of exhumations over the past few years where bodies are being repatriated by families.



5.31. **Smoke Control Areas -** The whole of Merton has been declared a Smoke Control Area. This limits what people can burn within their homes as a source of fuel. In general terms the fuel will either need to be smokeless, or the device used considered an authorised appliance.

5.32. The regulation and complaint investigation into this activity sits with the Pollution Team. In 2021 we saw better regulation introduced around the types of fuel that can be sold.

5.33. **Cleaner Construction for London –** Merton's Regulatory Services Partnership is delivering the world's first Low Emission Zone for Construction on behalf of London boroughs and The Mayor of London.

5.34. This grant-funded project has been running throughout London since 2019 and is reshaping the type of equipment used on construction sites. It uses

the planning agenda to ensure that construction plant is as clean as possible, and has seen much-increased compliance throughout London, as well as significant real-world pollution reductions.

- 5.35. **Anti-idling** - Over 200 anti-idling signs have been installed in the borough at schools, level crossings and taxi ranks. Currently 50% of schools have anti-idling signage installed. Our approach to anti-idling is through education and awareness-raising. An anti-idling plan for Merton has been developed, and aims to hold at least one event per borough per month.



- 5.36. These regular 'anti-idling action days' involve officers and community volunteers going out to speak to motorists with the aim of raising awareness and changing idling behaviour. Locations targeted by idling events include; schools, level crossings, bus stands, taxi ranks, high streets.

- 5.37. Civil Enforcement Officers (CEOs) have been trained to engage with idling drivers during their daily duties, with a particular focus at schools during drop-off and pick-up times. Handheld devices have been programmed to record anti-idling interaction.

- 5.38. **Food hygiene, Food standards and Health and Safety** - The food and Safety Team run a programme of risk rated hygiene and standards inspections in all food premises to ensure compliance with the Food Safety and Hygiene (England) Regulations 2013 and relevant food standards regulations. These require:

- The manufacture and sale of safe food
- Suitable traceability, labelling and presentation of food
- Mechanisms for the withdrawal or recall of unsafe food
- Food and feed imported into, and exported from, the EU shall comply with food law.

- 5.39. **Enforcement Examples;**

Morden Court Parade

- A longstanding problem with rubbish and rodents along the entire stretch of Morden Court Parade resulted in the service of a two Prevention of Damage by Pests Act notices on a restaurant and grocers/convenience store. The notices in conjunction with collaborative working with waste enforcement, the problem at that time was addressed.

Colliers Wood Restaurant

- A restaurant in Colliers Wood agreed to close voluntarily following a complaint of poor hygiene standards and sighting of rodents in the dining area. Officers have been working with the business to secure compliance. This is ongoing as of October 2021.

Shisha Bar

- A referral was received from the Fire Officer who raised concerns about poor hygiene spotted during his visit to the premises. Follow up by a food officer uncovered a mouse infestation and the businesses voluntarily closed. This premise has since improved and have requested a food hygiene rerating under the Food Standards Agency (FSA) Food Hygiene Rating Scheme. (FHRS)

Indian Restaurant, Raynes Park

- The food and safety team received a complaint alleging cockroach activity. When an officer followed up this complaint, she identified a severe infestation. The premises voluntarily closed to undertake remedial works. The business is now compliant and rerated with an improved score according to the FSA FHRS scheme.

Counterfeit Wine

- We were concerned to receive a complaint from a member of the public who identified possible counterfeit wine bought in the borough. Such complaints are prioritised due to the risk of methanol poisoning and this particular wine had been the subject of an alert from the FSA. On follow up we discovered a number of other bottles, labelled under the same brand, which were analysed and found to be counterfeit. The wine was purchased by the shop from a cash and carry outside the borough. We worked with the FSA and agreed voluntary surrender of the products. The case was referred to HMRC.

5.40. **Health & Safety** - The main Health & Safety legislation covering health and safety in all workplaces is the Health and Safety at Work etc. Act 1974 (the 1974 Act) and regulations made under it. Officers within the Regulatory Services Partnership are responsible for promoting and enforcing health and safety standards within certain types of workplace premises and public venues such as:

Shops	Offices (except government offices)
Hotels	Restaurants
Leisure premises	Nurseries and playgroups
Pubs and clubs	Museums (privately owned)
Places of worship	Sheltered accommodation and care homes

5.41. Other typically higher-risk activities and premises are enforced by the Health & Safety Executive (HSE). The service also investigates notifications of accidents and dangerous occurrences under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). Officers provide advice for workers, businesses or members of the public regarding the following matters and will investigate if applicable:

- Asbestos removal advice
- Cooling towers and evaporative condensers

- Legionnaires disease investigations
 - Health and safety at work legislation
 - Public safety in licensed pubs and clubs
 - Skin piercing
 - Smoke-free compliance
 - Unsafe working conditions
 - Tanning salons & sun bed safety
- 5.42. The enforcement powers available to officers under health and safety legislation allow them to, amongst other things:
- Enter a premises or workplace at any reasonable time without the requirement to obtain a warrant
 - Serving Improvement or Prohibition Notices on duty holders
 - Issuing simple cautions
 - Prosecution
- 5.43. **Enforcement Examples;**
- 5.43.1 An Improvement notice served on a dangerous staircase, where the treads were not wide enough to place a foot at a Newsagent in Merton High Street.
- 5.43.2 A Prohibition Notice served to prohibit the use of tumble dryers in a Mitcham launderette where officers found a gas leak and incomplete combustion on the gas burners.
- 5.43.3 Gas safety issues discovered during a routine inspection in a small retail premises that necessitated the call out of the Gas Emergency Service.
- 5.43.4 A Prohibition notice served on a smoking boot cleaning machine being used at a golf club on Wimbledon Common.
- 5.43.5 Multiple Notices served on the owners of a Timber yard following a serious accident where an employee broke their pelvis after precariously stored stock fell on them. Formal improvement Notices served on the business to address the following issues;
- Unguarded cutting machines used within the workplace
 - Racking that had clearly been struck and damaged by Forklift trucks
 - Lack of exhaust ventilation
- 5.44. **Noise and Nuisance** - The Noise and Nuisance team respond to over 3,000 noise complaints across Merton ranging from construction site noise, domestic noise, barking dogs, plant and equipment noise to noise from Pubs and clubs. The team acts as a Statutory Consultee under the Town and Country Planning Act 1990 and is a Responsible Authority under the Licensing Act 2003, ensuring that due consideration is given to reducing the impact of noise. An “out of hours” noise service is also provided to residents who wish to complain about noise issues outside of normal office hours.

- 5.45. The powers for officers enforcing noise and nuisance complaints are provided by the Environmental Protection Act 1990 and the Anti-Social Behaviour, Crime and Policing Act 2014. In relation to noise, officers must consider if a complaint about noise can be considered be a Statutory Nuisance as defined by the 1990 Act and subsequent case law.
- 5.46. In general terms, for a noise issue to count as a statutory nuisance it must do one of the following:
- Unreasonably and substantially interfere with the use or enjoyment of a home or other premises
 - Injure health or be likely to injure health
- 5.47. If the officers determine that the criteria above are met, officers must serve an Abatement Notice. This requires the “person responsible”, also defined to stop or restrict the noise. The “person responsible” may include the owner or occupier of the premises.
- 5.48. **Licensing** - The Council’s Licensing Service sits within the Regulatory Services Partnership and is responsible for the Council’s statutory licensing obligations including:
- Animal Welfare including home boarding, kennels, catteries, dangerous wild animals and riding establishments
 - The sale of alcohol and regulated entertainment
 - Gambling establishments
 - Scrap metal dealers
 - Street trading and markets
 - Massage and special treatments
 - Sexual entertainment venues
- 5.49. The enforcement options available to licensing officers include:
- Oral advice and written warnings
 - Simple Caution for admitted offences and where action has been taken to by the licensee prevent a recurrence
 - Prosecution
- 5.50. The Licensing authority and the Police can prosecute for breaches of license conditions and other statutory offences. Where appropriate officers also have the powers to:
- Issue a licensed premises closure notice (for premises under the Licensing Act 2003)
 - Require a minor variation application to be made (for premises under the Licensing Act 2003)
 - Apply for the license to be renewed (for premises under the Licensing Act 2003 or Gambling Act 2005)

- Impose additional license conditions
 - Refuse to renew a license
 - Revoke a license
- 5.51. The service works in close partnership with the local Metropolitan Police licensing team and when necessary joint Police/Licensing Authority inspections of licensed premises are carried out.
- 5.52. The service is heavily involved in the regulation of large-scale events and the investigation of complaints regarding unlicensed activities and breaches of licensing conditions including at the recent event held at Morden Park.
- 5.53. In order to ensure a fair trading environment the Licensing service will initiate enforcement action against premises not paying the correct fee.
- 5.54. **Enforcement Examples;**
- 5.54.1 A series of late night visits identified a number of premises selling late night refreshments without the necessary license.
- 5.54.2 Investigation into licenses issued to massage and special treatment premises identified a number of unlicensed premises.
- 5.54.3 In all cases above, businesses were offered the opportunity to apply and pay for the correct license retrospectively.
- 5.54.4 Following a complaint, licensing officers identified a dog boarder who was operating without a license. The business owner followed advice with respect to registering their premises and the conditions expected. He now has a license and complies with Animal Welfare legislation.
- 5.55. **Trading Standards** - The Trading Standards Service operates an intelligence led approach to service delivery that focusses the team's work and limited resources efficiently to deal with key priorities for stakeholders.
- 5.56. This approach facilitates effective targeting of frontline services so that we can tackle the rogues and criminals that prey on vulnerable people within our community, and other traders who trade in an irresponsible or unlawful manner that adversely affect our stakeholders. This ensures that resources are allocated to the most significant areas of work that affect residents, businesses and the community as a whole.
- 5.57. We operate to a core service specification and our current priorities are:
- Rogue Traders and Doorstep Crime - e.g. rogue builders
 - Age Restricted Sales - e.g. the sale of alcohol, knives, tobacco etc. to young people
 - Financial Scams - e.g. fraudulent mass marketing schemes to obtain money
 - Intellectual Property - e.g. counterfeit goods
 - Product Safety - e.g. chargers, cosmetics, toys
 - Fair Trading - e.g. e-commerce, misleading prices and descriptions
 - Metrology (Weights and Measures)
 - Business support and advice, 'better regulation'

5.58. **Overview of Trading Standards Activity -**

5.59. Trading Standards Officers undertook 816 visits to businesses that were open to assess compliance with The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

Activity	2019/20	2020/21
Number of complaints and service requests	2,755	3,206
Number of business compliance visits	492	943

5.60. **Doorstep Crime** - Complaints about rogue builders and tradesmen from residents and concerned neighbours where unscrupulous traders offering to do work on their properties have targeted elderly and vulnerable residents are a significant part of our work. Typical jobs carried out tend to be roofing repairs, paving of driveways and general maintenance. The work is usually of a poor standard, if carried out at all. The service has saved residents large sums of money through intervention on doorstep contracting incidents or straightforward bogus selling.

5.61. Officers have also been involved in proactive work to improve working relationships with partners and to educate consumers on doorstep crime and bogus selling, through community talks and advice to those that work with the vulnerable members of our community. We have initiated intelligence and information sharing with partners such as Safer Merton to help identify high-risk areas.

5.62. The wellbeing of older residents and people living alone is a key priority in the Joint Strategic Needs Assessment and we continue to work closely with local banks and building societies to identify potential doorstep crime incidents at an early stage. As a priority area of work we provide a same day response to all reported doorstep crime incidents and work with victims to provide support and advice to resolve problems interceding where required.

5.63. In addition to the financial loss suffered by residents, this type of crime can have a significant impact on quality of life and future wellbeing. Victims often suffer a lack of confidence, trust and fear of being targeted again in the future. We work in partnership with Adult Safeguarding, Age Concern, families of victims and other agencies to provide support.

5.64. In 2019/20 we investigated and intervened where required in 98 cases in Merton and in 2020/21 122 cases. We have undertaken work to promote awareness of doorstep crime in the community through presentations to community groups delivered in person and online during the Coronavirus (COVID-19) pandemic.

Enforcement Examples;

5.64.1 A Merton resident was duped out of £52,400 by a group of individuals who provided false business details including an address in London, N13. The resident paid out this amount of money over 3 days in August following a knock at the door, the men said that they were working at nearby houses.

5.64.2 The doorstep incident started with an offer to clean gutters for £69 and soon it escalated to removing tiles and ridge tiles to ascertain if the roof was safe to stand on. Then the roof needed replacing, flat roof materials were

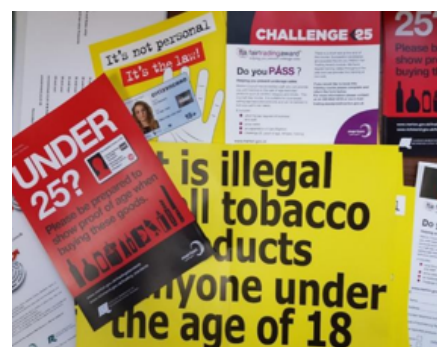
allegedly deteriorating, side walls needed 'joys' and a side door would soon collapse etc. There was a further demand for £93 to fix the side wall and at which point the resident became very concerned, questioning the exorbitant quotes. The leading man then became threatening and said they would not start any work until paid while promising that all the materials would be delivered by the end of the week.

5.64.3 Two workers were present at the property for a total of 5.5 hours. The roof was left damaged and at risk of rainwater coming through. Another company completed urgent repair work.

5.64.4 Trading Standards first became aware of the incident after the trader disappeared and was ignoring the resident's telephone calls. Enquiries are ongoing.

5.65. We continue to work with the Adult Safeguarding team in cases where doorstep crime stretches in financial abuse under the Care Act. We provide a fast/emergency response to reported incidents within normal office hours and aim to provide a same day response where achievable. Interventions have resulted in the prosecution of rogue traders in some cases we attend with the support of the police when the trader/s are still present on site. We also work with victims of doorstep crime to provide support and advice to resolve problems and acting on their behalf in some cases.

5.66. **Age Restricted Sales** - Statutory age restrictions apply to the sale of certain products including alcohol, tobacco, knives, films, video games and fireworks. Illegal sales can result in ASB that adversely affect our community. Young people who start smoking or drinking at an early age find it harder to give up and are more likely to suffer long term ill health.



5.67. Trading Standards regulation safeguards young people and contributes to better outcomes for local communities, residents and businesses through protecting young people from harm, keeping communities safe and supporting local business growth. We work in partnership with local businesses to prevent illegal sales by providing support and practical guidance to assist businesses with their legal obligations. Officers visit businesses and discuss best practice, provide practical advice, point of sale materials and refusal registers to facilitate effective compliance. This support is followed by targeted test purchasing of retailers where advice has previously been provided to test compliance. Advance notice is provided to the business with a specified period in which the test purchase will take place.

5.68. Businesses are encouraged to operate a Challenge 25 policy and request age verification identification from all customers who they believe to be Under 25. In 2019/20 and 2020/21, 100 test purchases were carried out by young people under the age of 18 and 25 closely supervised by Trading Standards.

5.69. **Case Example** - A 15 year old boy assisted officers on a test purchase exercise of alcohol and tobacco.

- Two Officer's entered the retail premises accompanied by the test purchaser. The boy selected a can of alcohol from the chiller cabinet and proceeded to a serving counter, where he also requested 20 cigarettes. The sales assistant directed the boy to another counter within the store. The boy asked a man, who it was subsequently ascertained was the owner of the business, for 20 cigarettes. The particular brand requested was unavailable however another type was selected.
- The owner subsequently stated that he asked his colleague, whether or not age identification had been proved. There appeared to be a communication error and he thought age identification had been checked however it had not. Both alcohol and tobacco were sold to the 15 year old.
- The owner and sales assistant have been interviewed and a report is in progress. Knife sales to young people remain a particular concern with an alarming increase in knife crime in London. The service contributes to the Violent Crime Reduction plan through providing advice and support to retailers, responsible retailer agreements and follow up test purchasing.

5.70. **Financial Scams** - A scam is a criminal scheme to con people out of their money. Each year mass marketing mail scams cause approximately £3.5 billion worth of detriment to UK consumers. Scam mail causes financial and mental suffering to millions of silent victims of fraud and many people are often too embarrassed to admit they have fallen victim to a scam. Typical examples include, "you've won a lottery, competition or sweepstake", "somebody has left you an inheritance" and "a fantastic money making opportunity just for you." Scammers send out catalogues selling food, pills, potions, jewellery, or items for your home and garden. They guarantee a prize to those who place an order but in every case recipients have to send money to claim the prize or take up the offer and prizes are never sent; just more offers and promises of prizes.

5.71. Trading Standards Officers work in partnership with the National Trading Standards Scams team to help tackle mass marketing scams. We provide practical advice and support to residents who have been targeted and are victims of mass marketing fraud, liaising with other agencies such as Adult Safeguarding.

5.72. **Case Example** - Mr. X had recently lost his wife of 50 years. Shortly after her funeral, he was contacted a clairvoyant a message for him from his beloved wife. The clairvoyant called each week to provide a new message at a cost of £75 per message or conversation.

- Mr. X now viewed Jill as a friend, his only link to his wife and was prioritising the cost of the message over other bills, meaning that he was not feeding himself properly or looking after his appearance. Officer spent several hours with Mr X and ultimately referred the case to Adult Social Services so he was able to receive the professional help he needed.
- This is only one type of scam that is targeted at the bereaved. Sadly, due to their vulnerability at such a distressing time, they are seen as an easy target. Acknowledging this, at the peak of the pandemic when sadly many more people were finding themselves in this situation, we produced an

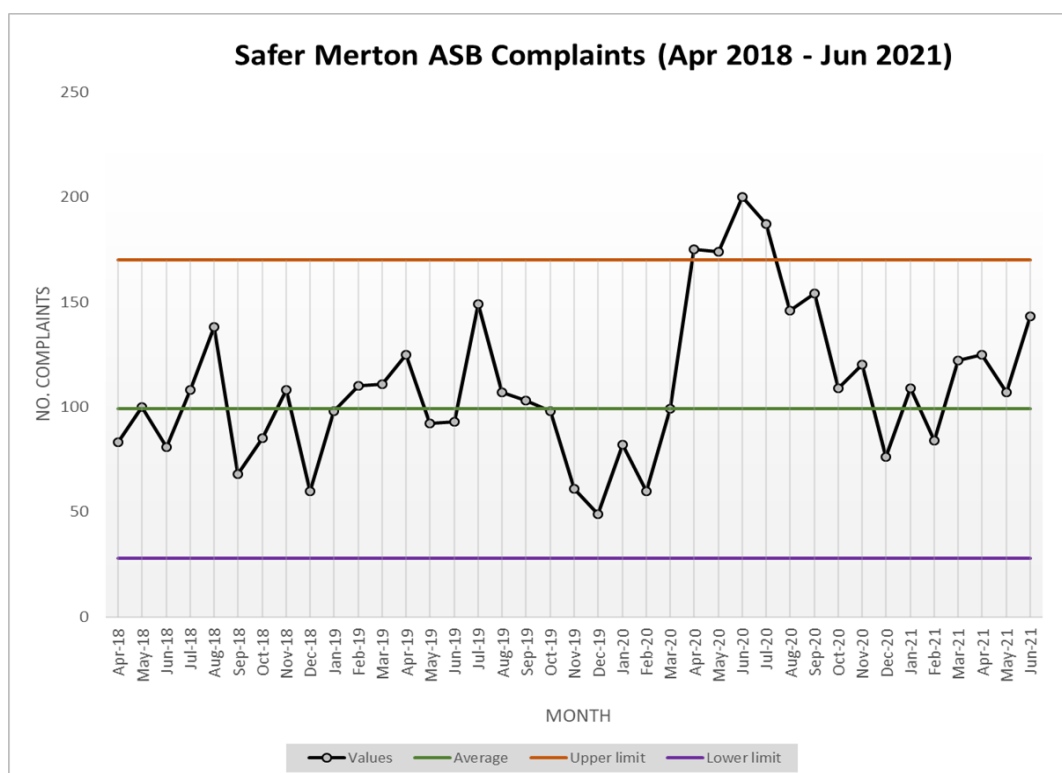
advice leaflet highlighting the common scams targeted at bereaved residents, giving advice on how to avoid them, and what to do if your loved one became a victim.

- When a resident becomes the victim of a scam, as well as the financial loss, the scam can have a significant impact on wellbeing and in many cases the scam causes far more problems than just financial loss. In order to promote awareness and support residents on how to avoid them, we have carried out a number of talks and presentations to community groups and organisations. These have been very well received and benefit not only the people who attend but also their friends and family through conversation.

6 SAFER MERTON

- 6.1. **Anti-Social behaviour** - Demand placed on Anti-Social Behaviour (ASB) services has continued to increase. In the 12 months up to March 2021, the Safer Merton Team has dealt with over 1500 ASB cases, up from around 1250 during 2018/19 and 874 during 2017/18.

Fig. 4 Anti-social Behaviour Complaints



- 6.2. While some of this increase is attributable to reports relating to the Covid-19 regulations during the months lockdown period, the rate of ASB reports has since remained elevated and well above the pre-pandemic levels: There were 126 ASB reports received during Q2 of 2021/22 which is 30% up on 2018/19 levels and 93% up on 2017/18 levels.

- 6.3. Safer Merton continues to lead on the co-ordination and delivery of the multi-agency response to ASB, supporting the commitment set out in the Community Plan, this includes:

- Implementing the Public Space Protection Order (PSPO) in relation to Alcohol Consumption in Public Places, ensuring that the PSPO is monitored and a balanced approach to enforcement and engagement is in place. Between 1st January 2021 and 31st October 2021, the Council has issued four (4) Fixed Penalty Notices to individuals for breach of the street drinking Public Space Protection Order. Additional details in relation to this PSPO are provided below (paragraphs 6.13-6.17)
- Delivering a targeted multi-agency response to locations in the borough subjected to persistent ASB. The Locality Board meets every two months and oversees this. The locations that are overseen currently by the Locality Board are Mitcham, Graveney, Wimbledon, Morden Town Centre, and Raynes Park.
- Investigating reports received by the council, supporting victims of ASB and resuming site visits post the lock down.
- The Community MARAC meets monthly to discuss high risk and persistent ASB cases. Since April 2021, the Community MARAC has discussed 30 cases.
- Working closely with the Rough Sleepers Group to ensure a coordinated response to rough sleeping (Merton's rough sleeping team has supported over 130 rough sleepers of which six are currently believed to be rough sleeping).
- Managing the partnership response to the Community Trigger. During 2020/21 Safer Merton received nine Community Trigger applications. During the first five months of 2021/22 (April – August) nine applications have been received - equating to an annualized rate of 21 per year.

6.4. **Use of CCTV** - During the last 12 months, CCTV operators recorded 3355 incidents. Of these 690 resulted in footage being downloaded for investigative or evidential purposes to support the Police, Council Enforcement team or other relevant agency.

6.5. The types of incidents, which have most commonly result in footage being captured to support investigation or enforcement, are: Fly tipping, Road Traffic Collisions, Robbery, Incident relating to a vulnerable person, Sexual Offence, and Assault. Together these types of incident account for 65% of all evidence captures by the Merton Public Spaces CCTV.

6.6. **Use of ECINS** - Introduced in May 2019, ECINS is a management system used by Merton Council and Safer Merton partnership agencies and organizations to record and share information relating to individuals, incidents and/or locations connected to anti-social behaviour. The purpose of the system is to provide the Safer Merton partnership with a means of timely, accurate and secure information sharing and coordination of interventions.

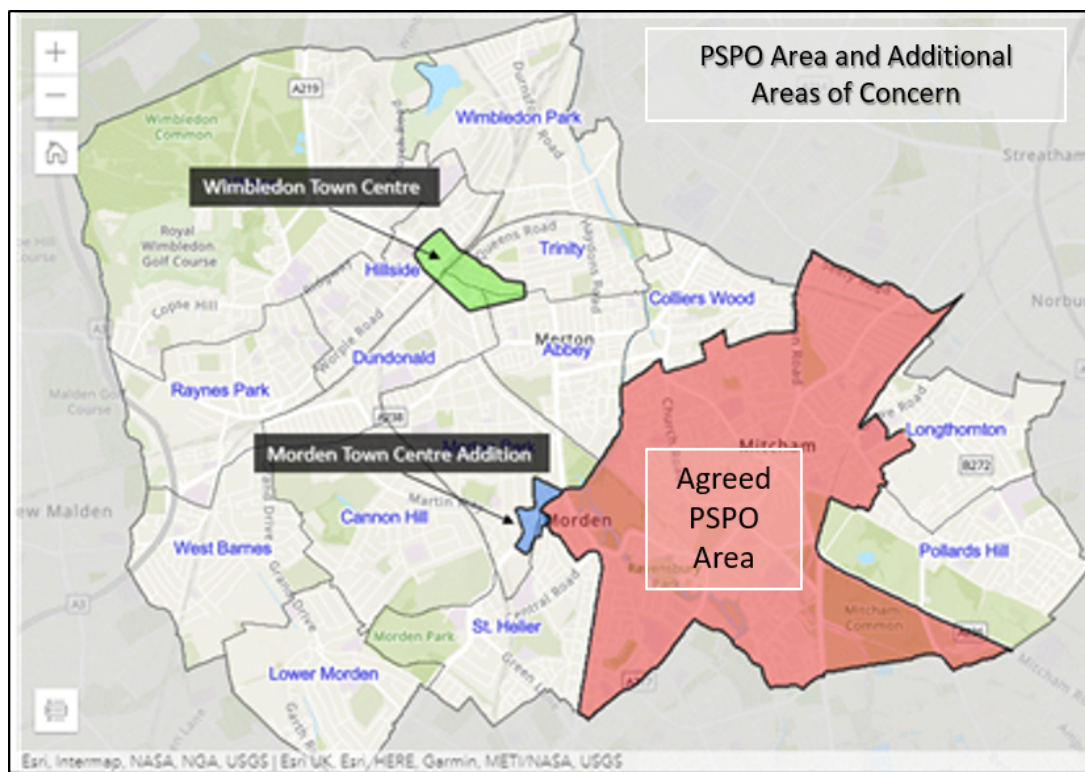
6.7. During last year (April 2020 - March 2021) over 1500 reports of anti-social behaviour have been recorded on the ECINS system by the Safer Merton Team. The ECINS system ensures that this information is readily accessible to the officers who need it, in a safe and secure manner. This supports

effective problem solving work through case management meetings as well as multi-agency panels such as the Community MARAC.

- 6.8. There is an ongoing program of work to expand the opportunities for teams to make use of the ECINS system across the partnership. This has included the delivery of a number of training sessions for staff in the use of the system and making use of the system to support the secure recording of Domestic Abuse MARAC related information. This work has been further bolstered by the recent news that ECINS has been selected by MOPAC as the system that will be used pan-London by Integrated Offender Management (IOM) Teams. Being able to interact in an integrated way with this data, by virtue of using the same platform should prove to be substantial benefit for Merton, which will avoid much duplication.
- 6.9. **Use of tools and powers of the ASB and Policing Act 2014 –**
- 6.10. **Case study 1:** Community Protection Notice Warnings (CPNW) and Community Protection Notices (CPN)
- 6.11. Community protection notices (CPNs) are designed to stop a person aged 16 or over, business or organization committing antisocial behaviour (ASB) which spoils the community's quality of life.
- 6.12. The Safer Merton Team had been receiving numerous reports about a household causing anti-social behaviour that was having a detrimental impact on the quality of life of other people living in the street. The issues had been ongoing for months and after a number of attempts to engage those involved failed to result in an end to the behaviour, the team issued a Community Protection Notice Warning. As the behaviour persisted, the team worked to compile a comprehensive set of evidence and Community Protection Notices were issued to each of the people involved. The notice included conditions requiring that the behaviour in question cease. Failing to comply with a CPN is a criminal offence. As a result of this intervention, the anti-social behaviour ended, bringing much needed relief to people living in the area.
- 6.13. **Case study 2:** Public Space Protection Order (PSPO)
- 6.14. Public Space Protection Orders (PSPOs) are a tool to address anti-social behaviour (ASB) and its impact on individuals and communities by prohibiting certain activities within a defined public area. Following an assessment of the available evidence, the results of the consultations with the public, police and community representatives and an equalities impact assessment, a Public Space Protection Order was put in place in October 2020. The purpose of this PSPO is to address alcohol-related ASB in the wards of Cricket Green, Figges Marsh, Graveney, Lavender Fields and Ravensbury.
- 6.15. The PSPO gives authorized officers of the council and the police the power to:
- Require an individual to stop drinking alcohol (or anything reasonably believed to be alcohol) in public where the individual is causing or likely to cause nuisance or annoyance or
 - Confiscate alcohol (or anything reasonably believed to be alcohol).

- 6.16. As part of the Community Safety Strategic Assessment the Safer Merton team will review the impact and data relating to the use of the PSPO – it is expected that due to the impact of the pandemic and lockdown periods that enforcement activity in connection to the PSPO will have been far lower than might otherwise have been the case.
- 6.17. For additional information on the PSPO, please see: <https://www.merton.gov.uk/communities-and-neighbourhoods/crime-prevention-and-community-safety/public-space-protection-order>

Fig. 5 – PSPO area map



7 PARKING ENFORCEMENT & BLUE BADGE ENFORCEMENT

- 7.1. The Council’s Parking Strategy aims to reduce congestion on the road and public transport networks, improve air quality, improve safety for road users and provide affordable parking spaces in appropriate locations to promote and enhance the local economy. The structured use of car parking controls and associated enforcement thereof is essential in helping to balance competing demands for road space, restraining nonessential traffic, and encouraging a shift towards more sustainable modes of travel.
- 7.2. Our Parking enforcement policies are published on our web pages and provide additional information:
<https://www.merton.gov.uk/streets-parking-transport/parking/enforcement>
- 7.3. Our Civil Enforcement Officers (CEOs) enforce throughout the day and into the evening when most parking restrictions apply. There are 4 teams of 8 operational on street and work on a shift/rota basis and 4 x CEO Team leaders who manage operational matters on a day to day basis. Up to date technology is used to issue Penalty Charge Notices (PCNs) and record photographic images of contraventions. CEOs use body worn video (BWV)

devices overtly to record the details of parking contraventions. The footage is invaluable in establishing training requirements for CEOs, which in turn, will improve communication with motorists and the general public. Parking enforcement by CEOs is carried out under the Traffic Management Act 2004 and the associated guidance

- 7.4. The enforcement of traffic regulations by CCTV cameras is regulated under the following legislation, as amended:
- Road Traffic Regulation Act 1984 (the 1984 Act)
 - Road Traffic Offenders Act 1988
 - Road Traffic Act 1991
 - London Local Authorities Act 1996 (the 1996 Act)
 - The Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 1997
 - London Local Authorities Act 2000
 - London Local Authorities and Transport for London Act 2003
 - Traffic Management Act 2004
 - The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- 7.5. Fixed CCTV cameras were introduced in February 2019 to enforce the yellow zig zag lines outside school entrances. This technology discourages drivers from parking dangerously and compromising the safety of children and pedestrians. The fixed cameras are deployed at each school for a short period during the first year of operation, but will then be used where high non-compliance is known to occur. A qualified officer reviews each recording and where it is determined that a contravention has occurred, a PCN is issued and sent by post to the registered keeper of the vehicle.
- 7.6. CCTV Automatic Number Plate Recognition (ANPR) has been used to enforce bus lane (the 1984 Act and the 1996 Act) and moving traffic contraventions such as box junction and no left/right hand turn restrictions throughout Merton for a number of years. This enforcement forms part of a wide range of measures aimed at improving reliability and punctuality of public transport, reducing congestion and pollution and allowing access for the delivery of goods. As with all fixed camera enforcement, a qualified officer reviews each recording and where it is determined that a contravention has occurred, a PCN is issued and sent by post to the registered keeper of the vehicle.
- 7.7. Merton has two CCTV cars which are also to capture parking contraventions. These are often used for school “zig-zag” enforcement. They are also now being used to assist with enforcement of Controlled Parking Zone enforcement areas through the use of ANPR technology linked to the geo data of zones through to the permit system.
- 7.8. A recent addition is the use of Mopeds for the speedy dispatch and delivery of service particular for enforcement requests from customers/residents, such as cars parked over an individual’s drive or in a dangerous place.

7.9. Charging levels for parking, bus lane and moving traffic contraventions in London Boroughs are set by London Councils' Transport and Environment Committee, subject to approval by the Mayor for London and Secretary of State. Higher penalties are imposed for bus lane contraventions and parking where it is generally not permitted, for example; yellow lines, school 'Keep Clear' markings, permit holders' bays and disabled bays without displaying the appropriate permit or badge. Lower penalties are imposed for contraventions such as; overstaying time paid for in a pay and display bay, or parking outside bay markings.

7.10. The current charges for PCNs issued within the London Borough of Merton are as follows;

	Full charge (£)	Discounted charge (£)
Parking (lower level)	60	30
Parking (higher level)	110	55
Bus Lane	130	65
Moving Traffic	130	65

7.11. The London Borough of Merton have recently applied to London Councils to move from Band B parking PCN charges to Band A parking PCN charges. If approved, the cost of PCNs will change as follows;

	Full charge (£)	Discounted charge (£)
Parking (lower level)	80	40
Parking (higher level)	130	65
Bus Lane	130	65
Moving Traffic	130	65

7.12. The total number of PCNs issued in the last 5 financial years is as follows;

	Parking lower level	Parking Higher level	Bus Lane	Moving Traffic	Total	Total Income
2016/17	41139	25170	21551	56220	144080	£7,864,247.00
2017/18	38598	28157	24119	67523	158397	£8,771,620.00
2018/19	40200	28325	21014	63132	152671	£9,181,237.00
2019/20	35003	23171	18167	53286	129627	£8,266,618.00
2020/21	20407	26330	9754	32585	89076	£4,538,545.50

- 7.13. As can be seen from the total numbers of PCNs issued in each year, the impact of COVID and lockdowns meant that there was a significant reduction in the number of journeys being made, resulting in a significant reduction in the number of PCNs being issued year on year. A point worth noting however is that while there was a reduction across the enforcement streams, the number of higher level parking PCNs issued remained comparable with previous years.
- 7.14. Members of the public who are inconvenienced by incorrectly parked vehicles can request parking enforcement through our established online service. Using a web-based tracking system, the position of the nearest CEO is identified for redirection to the location of the enforcement request. We endeavour to respond to all requests as quickly as possible and in circumstances where it is established that there is a continuing problem, the provision of more regular enforcement may be investigated. Residents who are often inconvenienced by vehicles parked in front of the dropped kerb outside their property (mainly around schools) can use our well-established online service to register their address which will better inform where CEOs patrol and enforce.
- 7.15. **Blue Badge Enforcement** - A Blue Badge is a parking permit for individuals who have severe mobility-impacted health conditions. Blue Badges will only be issued to individuals who have a permanent and substantial disability, or to an organisation which is involved in the care of physically disabled people. A Blue Badge enables the holder to access convenient on and off-street parking spaces either as a driver or passenger. A recent change to the Blue Badge eligibility is the inclusion of hidden disabilities and the impact is being considered and closely monitored.
- 7.16. Blue Badge misuse is a criminal offence and unfortunately it still lingers nationally and within Merton. A Department for Transport publication on Blue Badge misuse estimated that across England misuse costs local authorities around £45 million every year, placing considerable strain on the public purse. Some common examples of misuse include using a badge without the holder being a part of the journey, or using a lost, stolen or cancelled badge.
- 7.17. From the moment a CEO first sees a badge on display on a dashboard, they must ensure their BWV device is switched on. They must also ask relevant investigative questions at the scene, noting their surroundings, including the vehicle registration mark and who is in the vehicle.
- 7.18. In order to uphold the integrity of the Blue Badge scheme, Merton will increase the number of inspections are carried out by CEOs, who approach all vehicles with a Blue Badge on display and ask drivers specific questions in order to determine whether or not misuse is taking place. Where misuse is suspected, CEOs and authorised Council Officers are legally permitted to confiscate a Blue Badge and return it to the issuing Local Authority. We are able to confiscate the badge under the Disabled Person's Parking Badges Act 2013
- 7.19. Once a badge has been confiscated, council officers carry out a thorough investigation. This may include checking CCTV, watching the confiscation footage or examining a challenge received in response to the PCN. As part of an investigation, Parking Services may also contact other

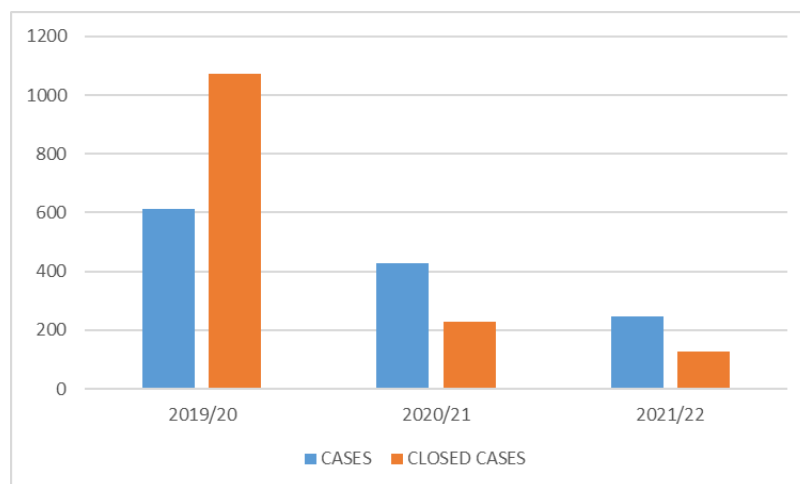
council departments, such as Registrars and Council Tax, as well as other local authorities, schools and private organisations/businesses. Any request for information is made under the Data Protection Act 1998, section 29(3) (prevention and detection of crime). After the evidence has been compiled by Parking Services the case is passed on to the SLLP for assessment and possible prosecution where appropriate.

8 PLANNING ENFORCEMENT

- 8.1. Planning control is a key area of priority for the Council and its stakeholders as the laws within this area of work 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, being required to ensure that the decisions and policies of the Council are complied with as the Local Planning Authority (LPA).
- 8.2. It is important to note that the Government has vested the primary responsibility for initiating enforcement action at the local level, including determining what action is deemed appropriate and necessary. The Council has a general discretion to take enforcement action, when they regard it as within the public interest.
- 8.3. From a Sustainable Communities perspective, when the enforcement team consider any action, the decisive issue is whether the breach of control would unacceptably affect the public amenity or the existing use of land and buildings meriting protection through appropriate enforcement action, which should be commensurate with the breach that has occurred.
- 8.4. The general current aim of the service is to ensure that:
 - All enforcement complaints will be treated in confidence, and anonymous complaints are not accepted. Residents, who are reluctant or concerned about submitting their details, may channel their concerns through the Ward Councillor.
 - All enquiries will be logged, allocated a reference number pertaining to the particular enquiry, and acknowledged.
 - An initial investigation, including a site visit, will be undertaken as soon as possible, depending upon the severity of the issue. For instance some cases require an immediate site inspection.
 - 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.
 - Some breaches of planning control will not be pursued beyond an initial investigation where subsequent action is found not to be expedient within the public's interest.
 - Where enforcement action is necessary, the appropriate notice will be served and action taken.
- 8.5. Breaches of planning control are generally not criminal offences, with the exception of:

- Unauthorised works to a listed building
 - Displaying unauthorised advertisements
 - Carrying out unauthorised works to protected trees or trees in conservation areas.
- 8.6. Around 30% of all complaints result in the closure of the enforcement case in the 'no breach' classification. The enforcement team continues to investigate breaches of planning control including unauthorised building works, hours of operation, adverts, works to listed buildings and uses. Outcomes of investigations include enforcement notices being served, prosecutions taken and direct action in default of compliance with a statutory notice to secure compliance.
- 8.7. There have been a number of significant successes and we continue to look for ways to communicate the no tolerance approach taken regarding planning enforcement.
- 8.8. The team have utilised enforcement days whereby the entire Development Control team 'Blitz' the Borough with visits to properties. The last one yielded 30 case closures following over 120 site visits in one single day.
- 8.9. Last year, the enforcement team began to undertake an improvement programme. This was being led by the Building & Development Control Manager (B&DC Manager) as the Enforcement Team Leader role had been vacant for some considerable time. As well as undertaking an improvement programme, the B&DC Manager also took on the role of leading the enforcement team. Unfortunately, following a period of sickness, the B&DC Manager left the Borough. Some improvements were put in place, prior to his leaving, but others have not yet been implemented. The outlined improvements are;
- Development of e-forms to enable improved customer accessibility to reporting directly onto the back office systems. The business logic can also be used to 'filter' complaints to ensure efficient operation - achieved
 - Improved education of our residents through improving the content and quality of the information available - achieved
 - A formal enforcement policy to better define for residents the intervention criteria used – draft policy produced but not yet implemented.
- 8.10. Last year, the enforcement team set an ambitious target to reduce the outstanding number of cases from nearly 1000 to 450 before the end of the financial year. Currently, the total number of open cases stands at 561. Since April 2021, 245 new cases have been received.

Fig. 6 – Planning Enforcement case management



Note – 2021/22 represents April to September values

- 8.11. Obviously, this is far higher than we would like but we currently have a new Interim Building & Development Control Manager who is assessing what needs to be done in the team and also have an Interim Enforcement Team Leader starting in December. This will enable significant improvements to be made to processes.
- 8.12. To date, we have experienced significant difficulties with recruitment across the team, both because of the pandemic and also because of the shortage of specialist professional roles in some areas. We also have problems with our tree service which falls within enforcement due to one tree officer (p/t) being on long term sick and the other tree officer having left the authority earlier in the year. We are actively recruiting for the tree officer post. Whilst we are unfortunately reliant on interims, recruitment for permanent staff to fill the roles is planned, although it is expected that the posts will take some time to fill.
- 8.13. Within Building & Development Control, we also enforce work being undertaken where we are aware of, or informed about, dangerous buildings and structures. In such situations, we serve Dangerous Service Notices under the London Buildings Acts (Amendment) Act 1939, requiring the owner of the building/site/structure the Notice is served on, to take urgent action to remedy the situation. We have recently had an instance where we were required to use our powers, and several officers from across the Borough worked as a team to provide advice and expertise to ensure that the situation was addressed. Such instances are often at great cost to the council as we sometimes need to take action such as appointing contractors to undertake work on our behalf which we then have to seek to recover from the parties who had the Notice served upon them.

9 HIGHWAYS ENFORCEMENT

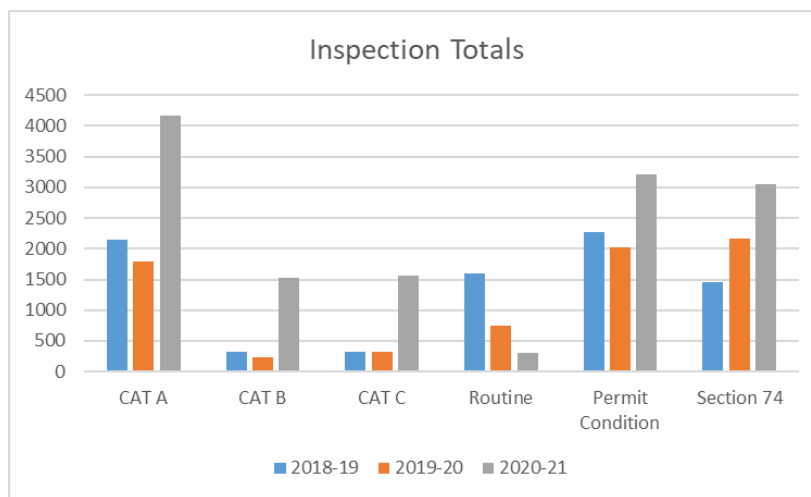
- 9.1. The Council's Highways Network Coordination Team usually manages around 14,000 utility permit applications per year. Merton's road network often experiences congestion, particularly at peak times. Traffic levels in general continue to grow nationally and this is exacerbated by increasing volumes of work and other activities on our roads.

- 9.2. The increase in works has been driven by a number of factors over the past 20 years including the failure of old water and gas mains and the roll out of new technology such as cable and broadband and the number of developments and new service demands. It is essential that effective measures are put in place to control and manage the degree of congestion to reduce the inconvenience and disruption that inevitably results. This will benefit residents, the travelling public, communities and businesses in the Borough
- 9.3. Prolonged periods of congestion, if not tackled, seriously restrict the economic growth and prosperity of the borough by:
- Undermining the competitiveness of existing local businesses,
 - Affecting deliveries and business travel,
 - Compromising the feasibility of some new developments,
 - Reducing the accessibility of sites and reducing their economic viability; and - lengthening the time taken for development to happen.
- 9.4. **Monitoring the safety of street and road works** - Merton's Network Coordination Team ensures compliance with the Safety at Street Works & Road Works Code of Practice (Safety Code) through continually monitoring a sample of highway authority and utility works in progress and increasing inspections on any companies who need to improve. In severe cases inspectors have the power to stop works if it is deemed that safe working practices are not being observed. Serious breaches of health and safety statutory legislation may be subject to legal proceedings, as is the case where the structural integrity of the highway is compromised by substandard reinstatement.
- 9.5. **Overrunning Works** - Where street or road works are unreasonably prolonged a charge will be levied under section 74 of the NRSWA. Income received through fixed penalty notices (FPNs), charges relating to unreasonable occupation of the highway (s74 charges) or other related revenue will firstly be used to support the costs of administering and improving the efficiency of the street works function.
- 9.6. **Monitoring the reinstatement of street works** - The Council has a duty to ensure that the Highway Network is fit for purpose, and the cost of maintaining the highway is considerable. However, any qualified utility company or sub-contractor can get permission to dig up the highway, provided that it is reinstated in a like-for-like manner.
- 9.7. The Network Coordination Team monitor street works whilst they are taking place (CAT A Inspections), aiming to inspect 10% of works in progress, 10% of works after 3-6 months (CAT B Inspections - to ensure reinstatement is up to standard), and 10% at the end of a 2-3 year guarantee period (CAT C). If findings are unsatisfactory, compromising the safety or structure of the highway, a contractor is asked to return and rectify the work to ensure that the Council doesn't end up carrying the cost of future repairs.
- 9.8. The Network Coordination Team also performs a number of other inspections associated with road and street works.
- Category A – In progress works sites

- Category B – Recently completed works sites (3-6 months)
- Category C – At the end of guarantee period
- Routine – Return inspections – defect monitoring – defect reinstatement
- Permit Condition – Performed to ascertain compliance with permitting conditions on site
- Section 74 (prolonged works) – Works completion inspection to ensure works are finished on time

	CAT A	CAT B	CAT C	Routine	Permit Condition	Section 74
2018-19	2140	321	315	1594	2265	1459
2019-20	1793	226	318	751	2018	2159
2020-21	4162	1519	1560	302	3211	3055

Fig. 7 – Highway Network Inspections



9.9. Highway licences which are currently managed by the Network Coordination Team include:

- Scaffolding
- Hoardings
- Mobile Cranes
- Builders Materials
- Temporary Traffic Regulation Orders – (TTRO)
- Section 171 Licence – Private Highway Works (Development Works)
- Section 50 Licence – Private Utility Works (Drainage Connections)

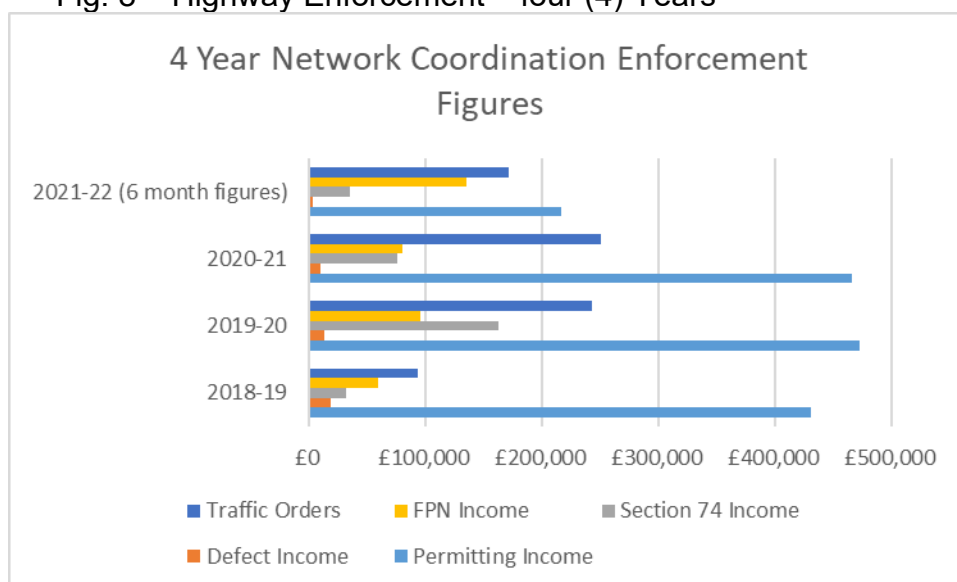
9.10. **Network Coordination Team (Income)** - Under permitting legislation, the operation and delivery of a permit scheme by a 'Highway Authority' must be deemed self-funding. The requirement to be self-funding is to ensure that councils operating permit schemes don't get burdened with additional costs associated the operation of the scheme. Yearly fees received by Merton Council for assessing utility permit applications cover the costs of operating

the team and all other incomes received through Street Works fines and enforcement are classed as profit.

9.11. Below is a table of the fees and charges related to permitting income, street works enforcement and temporary traffic regulation orders received by the Network Coordination Team over the past four financial years. Figures for 2020-21 are calculated from the first 6 months of the financial year.

	Permitting Income	Defect Income	Section 74 Income	FPN Income	Traffic Orders
2018-19	£430,522	£18,277	£31,450.00	£59,030.00	£92,635.00
2019-20	£471,911	£12,622	£162,250.00	£94,960.00	£242,414.00
2020-21	£466,016	£9,383.00	£75,025.00	£80,060.00	£250,431.00
2021-22 (6 month figures)	£216,299	£3,217.00	£34,547.50	£135,020.00	£171,493.85

Fig. 8 – Highway Enforcement – four (4) Years



9.12. **Network Coordination – Fixed Penalty Notices - Merton’s Network Coordination Team issues FPN’s from permitting requirements failures to on-site condition failures. Having adopted the functionality in running an FPN Scheme, the benefits of issuing FPN’s include the following:**

- Provision of accurate and timely data,
- Increase in confidence of notice/permit data,
- Increase in confidence within the street authority in its own ability to better co-ordinate works based upon this data,
- Improved performance in street works activities,
- A contribution to minimising disruption arising from road and street works,
- Improved working relationships,

- Standard reporting of data quality for all works promoters.

9.13. Merton Council through the use of the new Department for Transport (DfT) Street Manager system has spent a considerable amount of time on focussing on notification failures. Figures for FPN's are below for the last two financial year's enforcement activity.

MONTH (2021/2)	TOTAL PAID	No of FPN'S Issued	MONTH (2020/1)	TOTAL PAID	No of FPN'S Issued
Apr-21	£ 11,480.00	115	Apr-20	£ 6,580.00	46
May-21	£ 32,020.00	288	May-20	£ 4,020.00	38
Jun-21	£ 22,760.00	228	Jun-20	£ 4,400.00	29
Jul-21	£ 15,720.00	128	Jul-20	£ 2,340.00	22
Aug-21	£ 36,060.00	311	Aug-20	£ 7,240.00	56
Sep-21	£ 8,160.00	83	Sep-20	£ 5,280.00	47
Oct-21			Oct-20	£ 9,100.00	90
Nov-21			Nov-20	£ 7,080.00	61
Dec-21			Dec-20	£ 9,260.00	84
Jan-22			Jan-21	£ 5,800.00	55
Feb-22			Feb-21	£ 6,920.00	70
Mar-22			Mar-21	£ 12,040.00	119

9.14. **Scaffolding and Skips** - Between April 2020 and March 2021, 70 Scaffold Licences were issued and 10 sites were found to be illegal or non-licensed Scaffolds, subsequently turned into Licenced scaffolding sites.

9.15. The Council issued 482 Skip Licenses and investigated over 100 footway defects relating to skips with no license or badly positioned or no safety lights. Members may wish to consider how the number of approved skip licences relates to the number of skip lorries in residential streets which are often a source of complaint despite most skips being licenced.

9.16. For this year; April 2021 to October 2021;

- 68 Scaffold Licenses issued so far and 8 of these were found to be illegal or non-licensed.
- 418 Skip Licenses issues so far and again over 100 defects found relating to skips with no license or no lights or badly positioned.

9.17. **Overgrown Vegetation on the Highway** - Reports of overgrown trees and shrubs come in from a variety of methods, from the public on line report-it forms, from the phone, from emails, reported via the contact centre. We receive over 500 complaints per year, 385 of which received an enforcement notice, 120 approximately received a second enforcement letter and over 50 were cut back by the Council and re-charged to the property owners.

10 HOUSING ENFORCEMENT

10.1. The Housing Enforcement Team forms part of the Housing Service under the Community and Housing Directorate. Its role is to promote and enforce standards in residential properties and covers the following services and activities:

- a) Reactive Complaints (requests for service) about housing conditions and overcrowding private renters, social tenants and owner/occupiers.
- b) Emergency Reactive Complaints (requests for service) about housing conditions - private renters, social tenants and owner/occupiers.
- c) Public Health and Nuisance:
 - Accumulations of refuse on private land.
 - Harbourage for pests on land in in homes - private renters and owner/occupiers.
 - Drains and sewers in private ownership.
 - Pests in private rented accommodation.
 - Reports of housing related issues between dwellings, e.g. damp/leaks affecting neighbours - private renters, social tenants and owner/occupiers; and,
 - Filthy and Verminous property - private renters, social tenants and owner/occupiers.
- d) HMOs (private rented sector):
 - Reporting unlicensed HMOs.
 - The licensing of mandatorily licensable HMOs.
 - Enforcement in licensed HMOs.
 - Proactive identification of HMOs; and,
 - Maintaining Public Registers of HMOs and temporary exemptions from licensing.

- e) BABIE Inspections (Bed and Breakfast Information Exchange) – now known as STS (Setting the Standard). Inspections of properties used for temporary accommodation in the borough to ensure they meet standards.
- f) Working with government bodies regarding tall buildings (Over 18m)
- 10.2. With regard to tenants of Registered Providers (Housing Associations), these have their own internal complaints process and where their tenants are unsatisfied with this response, they have recourse to the Housing Ombudsman. It is our policy that we would expect tenants of Registered Providers to exhaust these processes before we will intervene. This allows the Council to target their limited resources on tackling the minority of landlords in the private sector who do not maintain their homes appropriately.
- 10.3. In June 2019, Cabinet approved a refreshed Housing Enforcement Policy (the Policy). The aim of the Policy is to promote efficient and effective approaches to inspection and enforcement. Moreover, it aims to ensure that enforcement action is:
- Targeted on risk- at properties and people that pose the greatest risk, including owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people’s health and safety at risk.
 - Proportionate - reflecting the nature, scale and seriousness of any breach or non-compliance.
 - Fair and objective - based on the individual circumstances of the case, taking all factors into account.
 - Transparent – Officer’s actions will be explained in plain language, with clear reasons given for any enforcement action taken and compliance. A clear distinction will be made between legal requirements and advice or guidance.
 - Consistent - taking a similar approach in similar circumstances to achieve similar ends. All factors such as the level of risk, the history of compliance and the attitude and actions of those involved will be considered
 - Accountable - undertaken in a responsible manner that has a clear purpose.
- 10.4. Where enforcement action is taken, the Officer will ensure that information about their rights of appeal are provided. Furthermore, service complaint details can be provided on request.
- 10.5. There are a range of enforcement options available to the Housing Team. The most commonly used legislation includes The Housing Act 2004, the Housing Act 1985 (as amended), Public Health Acts 1936 and 1961, Prevention of Damage by Pest Act 1949 and the Environmental Protection Act 1990.
- 10.6. Further to requests from Ministry of Housing and Local Government (MHCLG) regarding cladding and fire safety in high rise buildings (18m or higher and privately owned), officers from Housing Enforcement and Build-up Control have successfully worked together to 1) Survey and identify

affected blocks, 2) Liaise with owners, agents and other interested parties, 3) Update DELTA database (the MHCLG information portal) and 4) Issue s235 Housing Act notices so as to achieve a complete data set.

- 10.7. **Privately Rented Property** - Properties are inspected using the housing health and safety rating system (HHSRS) which links defects in properties with hazards to the health or safety of the occupants or visitors. Where properties have been assessed as having a high hazard rating, or there has been a failure to comply with legislation covering houses in multiple occupations, an assessment of risk will be undertaken to determine the appropriate course of action and to inform the decision on whether immediate enforcement action is necessary.
- 10.8. The Council takes a proactive approach to housing enforcement and officers target those landlords who deliberately or persistently break the law. Where poor conditions are identified in a privately rented property, action is taken to identify and inspect other properties owned or managed by the same individual or company. Officers seek to identify HMOs that require a mandatory licence and properties where Category 1 hazards exist.
- 10.9. Where there is a breach of a legal requirement and the Council considers that formal action is required officers may seek to prosecute the offender. Although each case (and our response) is considered on its merits, prosecution will generally be reserved for the most serious cases. These include failures to provide documentation on information requested to determine interested parties and the occupancy of premises. Any decision to prosecute will be taken in accordance with the Regulators 'Code, the Council's Housing Enforcement Policy and the Code for Crown Prosecutors.
- 10.10. The Council may as an alternative to prosecution, serve notices imposing civil penalties of up to a maximum of £30,000.
- 10.11. A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a HMO licence for a property that was required to be licensed as such. The Housing and Planning Act 2016 extended this power to now cover a much wider range of offences.
- 10.12. Where a statutory nuisance is found to be prejudicial to health, less than 21 days (the standard appeal period) may be given for completion of the works to abate the nuisance. Examples of situations which are regarded as being prejudicial to health, and for which a notice under section 80 of the Environmental Protection Act 1990 will be served, include:
- Extensive water penetration;
 - Defective boilers leaving the property without any means of providing either hot water and/or heating (dependent on the time of year and whether or not there are vulnerable occupants).
 - Dampness or condensation resulting in mould growth where there are occupants with respiratory problems.
- 10.13. Where Statutory Nuisance notices are not complied, as a way of enforcement, works in default are carried out and a charge is placed on the

property. This includes the cost of the remedial works and a surcharge for the Council's established costs.

- 10.14. **Licensing of Houses in Multiple Occupation (HMOs)** - All decisions in respect of HMO licensing are taken in accordance with the provisions of the Housing Act 2004 and regulations made under that Act. Since October 2018 the scope of mandatory licensing has been extended.
- 10.15. The new definition for Mandatory Licensing removes the 3-storey requirement. Houses in Multiple Occupation being five (5) or more occupiers living in two (2) or more households, regardless of the number of storeys, will need to be licensed. Note that there is no requirement for the building to be converted in any way, so a conventional house could fall within scope if it meets the occupancy requirements.
- 10.16. Flats in Multiple Occupation are rather more complex. Mandatory licensing will not apply to a purpose-built flat in a block with 3 or more self-contained flats. A purpose built flat is a flat that was constructed as a flat as opposed to a flat located in a converted house.
- 10.17. Most flats within large purpose-built blocks will therefore fall outside of the scope of mandatory licensing provided there are 3 or more flats in the block. However, purpose-built flats in smaller blocks with up to 2 self-contained flats will fall within mandatory licensing if the occupancy and household requirements are satisfied. This applies regardless of whether the flat is above or below commercial premises. Each individual HMO is required to be licensed and not the building within which the HMO is situated.
- 10.18. In recent years the council has taken a proactive approach to housing enforcement and the prosecution of rogue landlords. The most recent case was in September 2021 and brief synopsis of the case is as follows;
- Following a report of a suspected unlicensed HMO, two officers inspected a property in Wimbledon Park. On inspection they found that four households comprising of five individuals occupied the property. The property required a licence but records indicated that it was not, nor was there a pending application.
- Despite numerous attempts by the officers to engage with the landlord - a Director of a Limited Company - and persuade him to apply for a Licence, he failed to do so.
- During inspection, officers found that the landlord had failed to comply with Management of Houses in Multiple Occupation (England) Regulations 2006 and that tenants were at risk as there was lack of adequate means of escape from fire and other fire precautions.
- The Director also failed to comply with a Housing Act 2004, section 235 Notice. Due to severity of the situation, officers collated evidence and presented this to the courts for prosecution in September 2021
- 10.19. Officers were successful with this action and the landlord was found to be guilty of all offences, and the sentence was a fine totalling £33,280.
- 10.20. **A summary of prosecutions include:**

Prosecutions since 2019

LBM v Landlord of Property in Graveney Ward (6th August 2019)	Unlicensed HMO and other offences under Housing Act 2004. Sentence - Fine - £1,965; Costs - £1,750; Victim Surcharge - £196 The total amount payable = £3,911.00
LBM v Landlord of property in Colliers Wood (25th October 2019)	Unlicensed HMO and other offences under Housing Act 2004 Sentence - Fine - £3, 844; Costs - £1,997.50; Victim Surcharge - £170. The total amount payable = £6011.50
LBM v Landlord of property in Figgs Marsh (5th November 2019)	Unlicensed HMO and other offences under Housing Act 2004 Sentence - Fine - £2694.00; Costs - £1,990.00; Victim Surcharge - £170 The total amount payable = £4854.00.
LBM v Landlord of property in Graveney (4th May 2021)	Unlicensed HMO and other offences under Housing Act 2004 Sentence - Fine -£13,800; Costs - £2,530.00; Victim Surcharge - £190 The total amount payable = £16,520.00
LBM v Landlord of property in Wimbledon Park (22nd September 2021)	Unlicensed HMO and other offences under Housing Act 2004 Sentence- Fine- £30,560, Victim Surcharge £380 prosecution costs £2340 The total Payable £33,280

10.21. Civil Penalty Notices (CPNs) are an alternative to prosecution for a variety of offences under the Housing Act 2004. Civil Penalties are fines issued by the council on the landlord as an alternative to bringing a prosecution against them. Civil penalties are available for offences such as;

- Failure to comply with an improvement notice
- Offences in relation to the licensing of a House in Multiple Occupation (HMO)
- Contravention of an overcrowding notice
- Failure to comply with management regulations for HMOs

Civil Penalty Notices since 2019	
LBM v Landlord of property in Graveney (20th March 2020)	Unlicensed HMO and other offences under Housing Act 2004 The amount of financial penalty was £12,000 reduced to

	£8,000.00
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11 CONSULTATION UNDERTAKEN OR PROPOSED

11.1. None for the purposes of this report.

12 TIMETABLE

12.1. None for the purposes of this report.

13 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

13.1. None for the purposes of this report.

14 LEGAL AND STATUTORY IMPLICATIONS

14.1. None for the purposes of this report. The report details a number of statutory provisions which imposed statutory controls governing various areas and which impose enforcement duties and obligations on the Council.

15 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

15.1. The Council’s Overarching Enforcement Policy states ‘Regard shall be given to the relevant legislation, codes and policies which protect the rights of the individual and guide enforcement action, (These include the Human Rights Act 1998, Code for Crown Prosecutors, Corporate Customer Services Strategy and the Council’s Equality and Diversity Policy).

16 CRIME AND DISORDER IMPLICATIONS

16.1. The policies and approaches to enforcement across the Council are outlined within the report.

17 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

17.1. None for the purposes of this report.

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

None for the purposes of this report.

19 BACKGROUND PAPERS

19.1. COUNCIL WIDE ENFORCEMENT POLICY – [LINK TO DOCUMENT](#)

19.2. THE REGULATORY SERVICES PARTNERSHIP POLICY ON ENFORCEMENT – [LINK TO DOCUMENT](#)

19.3. SAFER MERTON AND ENFORCEMENT PRIVACY NOTICE - [LINK TO WEBPAGE](#)

19.4. PLANNING ENFORCEMENT REGISTER - [LINK TO WEBPAGE](#)

19.5. PARKING SERVICES ENFORCEMENT POLICY - [LINK TO DOCUMENT](#)

19.6. TRADING STANDARDS ENFORCEMENT POLICY - [LINK TO WEBPAGE](#)

19.7. HOUSING ENFORCEMENT POLICY 2019 – 2024 - [LINK TO DOCUMENT](#)

19.8. FLY-TIPPING STRATEGY (DRAFT) - [LINK TO DOCUMENT](#)