

Committee: Sustainable Communities Scrutiny Panel

Date: 22nd February, 2022

Wards: Borough Wide

Subject:

Lead officer: Chris Lee, Director, Environment & Regeneration

Lead member: Councillor Martin Whelton

Contact officer: Lesley Barakchizadeh, Interim Head of Development Management & Building Control

Recommendations:

A. That the report be noted

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 At the November 2021 meeting of Council, a Motion was passed regarding Planning Enforcement. The full wording is below:

‘Council recognises the importance of good town planning and understands that local residents want planning applications that are approved to be adhered to and properly enforced.

Council notes that the building development control function has had an improvement programme underway since 2020, but while many of the improvements have been implemented, some have been delayed due to recruitment issues which the trade magazine UK Construction Excellence describes as a “long-predicted shortfall” in the building control sector across the UK. This in turn has had an impact on the capacity for planning enforcement with the latest statistics showing that the number of planning enforcement cases closed each month are at 46% of their target.

Residents demand and expect that all development in Merton is in accordance with sound planning principles and planning law, and Council notes that the government has failed to prepare for this long-predicted shortfall in the sector, or to fund councils so that they can provide services to the level that residents and councillors would want.

Therefore, council requests that the Cabinet Member for Housing, Regeneration and the Climate emergency in conjunction with the Director of Environment and Regeneration lobby the government to put in place measures to improve planning enforcement, to prioritise the rolling out of the improvement programme, and seek to tackle the backlog in cases, and report on progress to council in 6 months’ time, and to one meeting of the Sustainable Communities Overview and Scrutiny Panel in 3 months’ time.

Council expects the following aspects to be included:

- The cost and viability of an online portal for planning enforcement cases which councillors and residents can see;

- Ways to improve reporting of planning breaches on the council website;
- Action plan to tackle the backlog in planning enforcement cases;
- Analysis of how well planning enforcement measures result in appropriate outcomes;
- Continued enforcement of existing planning laws against individuals and developers who break planning rules;
- Using public communications to highlight enforcement breaches (including a continued emphasis on those who fell trees in contravention of planning rules);
- Continuing to review the outcome of development following completion to ensure that greening measures have been implemented, including tree planting (in line with the council's Tree Strategy);
- Continued strong protection of existing trees via powers under Tree Protection Orders.
- The importance of good communication between the Planning Dept and the public and councillors;
- A full costing of all the above measures and an outline of the cuts that would have to be made to other services, and the impact of these, if the cost has to be borne in whole by the council rather than from direct additional grant.

1.2 This report provides information on our Planning Enforcement Action Plan and the other issues raised.

2. DETAILS OF ACTIONS BEING TAKEN

2.1 Planning Enforcement is an important and emotive service area and the Enforcement Team are faced with increasing numbers of complaints, some of which are found to be breaches, others which are a misunderstanding of what constitutes a breach.

2.2 We receive well over 400 cases each year, from a variety of sources. We also receive an average of 650 tree applications each year, which are dealt with by the same team. Despite the earlier roll out of the improvement programme, which tackled a number of issues including a focus on closing multiple cases, it is recognised that the backlog has continued to grow to an unacceptable level and a number of urgent actions are being taken to resolve this.

2.3 A Planning Enforcement Action Plan is attached as an Appendix. The Action Plan deals not only with the issue of the backlog, but other relevant issues to improve the enforcement service. Actions contained within the Action Plan are already underway.

2.4 As well as attaching the Action Plan, this report will comment on each of the bullet points in the Motion but it should be noted that some of these require significant work to be undertaken and as such, cannot be achieved quickly.

- 2.5 – Cost and Viability of an Online Portal: this has been discussed with the Business Systems Manager. Any such portal would need to link in to our existing Planning System M3, which in itself requires investment and further upgrades. This is the subject of ongoing discussion.
- 2.6 – Ways to improve reporting of Planning Breaches on the council website: currently, there is a perfectly adequate way to report planning breaches on the website. It is easy to locate by searching either ‘planning breaches’ or ‘enforcement’. Either of these will bring up an online form and advice. We are currently investigating if this could be further improved by making it possible to attach photographs and by including an ‘urgent response’ contact and advice for situations which require immediate attention such as the felling of a tree with a TPO/in a Conservation Area or unauthorised work on a listed building that is already underway.
- 2.7 – Action Plan to tackle the backlog of enforcement cases: this is attached as an Appendix. Additionally, we have appointed a temporary enforcement officer for a period of 6 months from the Your Merton Fund specifically to assist with the backlog.
- 2.8 – Analysis of how well planning enforcement measures result in appropriate outcomes: we have specifically looked at this point and are currently doing an exercise tracking cases from a period of time and identifying what the outcome was. There could be a number of outcomes including: ongoing; no action required as no breach; Temporary/Stop Notice issued; retrospective planning application; enforcement notice or breach of condition notice etc issued; remedial action e.g. planting of semi mature trees or putting a site back to how it was originally; prosecution, injunction to restrain actual or apprehended breach of planning control.
- 2.9 - Continued enforcement of existing planning laws against individuals and developers who break planning rules: this is ongoing on a daily basis with site visits and follow up action taken on the approximately 400 cases we receive annually. For instance we recently successfully took action at 7 Streatham Road resulting in costs being awarded to the Council of over £30,000. Another example is where we inspected a property following a complaint where the resident had paved over the front garden to use it for parking. Following our intervention, the front garden was reinstated to its original condition with grass and fencing. This month we also visited a site where a car wash was operating without consent and issued a temporary stop notice which we followed up. The car wash ceased business and is awaiting the outcome of a planning application.
- 2.10 - Using public communications to highlight enforcement breaches (including a continued emphasis on those who fell trees in contravention of planning rules): We currently use the Corporate Communications Team to publicise where we have successfully taken action on enforcement breaches and are intending to increase our activity in this area.
- 2.11 - Continuing to review the outcome of development following completion to ensure that greening measures have been implemented, including tree planting (in line with the council’s Tree Strategy). This is an area where improvements are needed and we are investigating how best to tackle this important area of work.

- 2.12 - Continued strong protection of existing trees via powers under Tree Protection Orders. This is ongoing. We receive approximately 650 tree applications pa and in addition have to input into landscaping plans/tree removal request on planning applications. In the past 2 months alone, our interim tree officer has closed 243 tree applications. We do take action where trees with TPOs or within Conservation Areas are felled or worked on without consent. The action taken is usually to remedy the situation by planting semi mature trees rather than punitive action such as prosecution. We inspect to ensure that trees have been planted as required.
- 2.13 - The importance of good communication between the Planning Dept and the public and councillors. It's obviously essential to have good communication between all concerned parties. It is important that enquiries/complaints come through the correct channels. So if a councillor is logging a complaint it is important that this is sent either through the Members system or at least copied to the Members system as well as the officer. We also need to direct the public to use the correct system for logging planning enforcement complaints, using the online form on Merton's website or channelling their complaint through a councillor. At the moment, we receive enforcement complaints through numerous sources and this can mean that there is an increased risk of them being lost. A key area for improvement is getting back either to councillors or the public once we have taken action or decided no action is necessary. Too often this is overlooked, resulting in people not knowing what has happened, if anything. This creates additional work for everybody.
- 2.14 - A full costing of all the above measures and an outline of the cuts that would have to be made to other services, and the impact of these, if the cost has to be borne in whole by the council rather than from direct additional grant: It has not been possible to ascertain the cost of all of the measures required as yet but work is underway on costing up what is required, including putting in place an adequate structure for the required workload.

3. TIMETABLE

- 3.1 Work on reducing the backlog is already underway as are other improvement actions. Some actions, particularly improvements/changes to our IT systems, will naturally take longer.

4. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 4.1 There are no specific implications at this time although there will be financial implications once a restructuring exercise has taken place. Additionally, there will be financial implications for putting in place new IT systems such as an online portal but more work will have to be undertaken to identify the cost of these.

5. LEGAL AND STATUTORY IMPLICATIONS

- 5.1 No specific implications at this time

6. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 6.1 No specific implications at this time

7. CRIME AND DISORDER IMPLICATIONS

7.1 No specific implications at this time

8. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

8.1 No specific implications at this time

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

- Planning Enforcement Action Plan

10. BACKGROUND PAPERS

10.1 None

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