

Committee: Planning Applications Committee

Date: 27th April 2023

Agenda item: Enforcement Report

Wards: All

Subject: **PLANNING ENFORCEMENT - SUMMARY OF RECENT WORK**

Lead officer: **HEAD OF SUSTAINABLE COMMUNITIES**

COUNCILLOR Aidan Mundy, CHAIR of PLANNING APPLICATIONS COMMITTEE

Contact Officer Raymond Yeung: 0208 545 4352
Raymond.Yeung@merton.gov.uk

Recommendation:

That Members note the contents of the report.

1. Purpose of report and executive summary

This report details a summary of casework being dealt with by the Planning Enforcement Team and contains figures of the number of different types of cases being progressed, with brief summaries of all new enforcement notices and the progress of all enforcement appeals.

Current Enforcement Cases:	335	New Appeals:	2
New Complaints	25	Existing Appeals	9
Cases Closed	20	<i>There is a high volume of backlog at the Planning Inspectorates to determine appeals, the waiting time with them is several months, the existing appeals have not progressed with the inspectors.</i>	
New Enforcement Notices Issued			
Breach of Condition Notices	0	Prosecutions: (instructed)	0
Enforcement Notices	2	New Instructions to Legal	1
S.215: ³	1	Existing instructions to Legal	3
Others (PCN, TSN)	0	<hr/>	
Total	3	TREE ISSUES	
		Tree Applications Received	57
		% Determined within time limits:	93%
		High Hedges Complaint	0
		New Tree Preservation Orders (TPO)	1
		Tree Replacement Notice	0
		Tree/High Hedge Appeal	1
		5-Day notice	3

Note (*figures are for the period from (from 3rd March 2023 to 17th April 2023).*)

¹ S215 Notice: Land Adversely Affecting Amenity of Neighbourhood.

It should be noted that due to the pandemic the Planning Inspectorate have over a year's backlog of planning enforcement appeals to determine. The Planning Inspectorate have recently stated that they are concentrating on the larger complexed schemes which take priority over householder and smaller cases.

2.0 Recent Enforcement Action

The Beeches -Broken fences and untidy land – Before and after

The council were notified about the state of the fences in this residential area, following contact made by officers, the fence was replaced immediately along with the clear up paving and repairing of patios slabs.



Before



After

Market Square, Upper Green Mitcham –erection of stalls Before and After

Officers were notified about the stall erected against the trees, following a discussion with those responsible it was removed immediately.



Before 21st March



After 27th March

Land at 144 Central Road – Caravan untidy land -Before & After

Officers visited the car park and a warning letter was placed on the caravan, the results are below.



Before



After

Land at 93 Montacute Road – Asbestos untidy land -Before & After

Officers visited the property and discussed with the developer, after negotiations, it was moved via informal enforcement action, the results are below.



Photo taken Wednesday 15th Feb 2023



Photo taken March 2023

156 Merton Hall Road - Before and after -Advertisement -Before & After

An advert was placed on the side of a restaurant facing Kingston Road which is a designated **Merton Hall Road conservation area**, the advert had no consent .

Officers visited the property and discussed with the owner and staff of the restaurant, after negotiations, it was moved via informal enforcement action, the results are below.



Before-Advertisement of restaurant



After advertisement removed

The Nelson trading estate Advertisement -Before and after

Advert banners were placed on the fencing of the trading/retial park, officer discussed with the land owner to remove the banners from the boundary fencing

Before -January 2023



After February 2023



Burn Bullock – 315 London Road

In March 2023, Planning enforcement notice was hand delivered at the site for the unauthorised material change of use of the public house main building and ancillary car parking to a large House of Multiple Occupation (“HMO”), car-repair and cleaning workshop, storage, scrapyards and installation of portacabins.

The requirements are to; 1. permanently cease the unauthorised material change of use of the former public house main building and ancillary car parking to a House of Multiple Occupation within the main building on the Land; 2. Permanently cease the unauthorised material change of use of the car park on the land for storage, car-repair & cleaning workshop, scrapyards and stationing of mobile homes for residential accommodation (sui-generis) on the Land; 3. Completely remove all of the vehicles stored on site for commercial purposes on the Land; 4. Completely remove all of the scrap car parts, sofas, pallets, waste, and general rubbish on the Land; 5. Completely remove all of the portacabins, non-functioning vehicles, trailers, forklift and caravans on the Land; 6. Completely remove the caravans, trailers, vans and trucks used for mobile homes on the Land and; 7. Completely remove from the Land all associated materials, fixtures, fittings and debris and take off site on the Land. They have 3 months from the April effective date to comply with the notice unless an appeal has come in before the effective date. Having tried to get the responsible persons to comply with the notice and arrange another visit, they have appealed against the notice, we are awaiting for the start date letter from the planning inspectorates.

52-54 High Street, Wimbledon, London SW19 5AY

A notice was served for the installation of roller shutters on the shopfront

The Subject site, is located on the east side of High Street, Wimbledon, SW19 in the Wimbledon Village Conservation. The property comprises of 5 storey buildings with commercial premises on the ground floor and residential accommodation above. The surrounding area comprises of commercial and residential mix of properties.

The case was served on the back of planning application ref: 21/P3884 for the retention of the shop front and the roller shutter was refused, it was considered harmful in the Wimbledon conservation area and to the street scene.

Requirements of the Notice

1. Permanently remove the roller shutters.
2. Remove all materials, fixtures, fittings and debris associated in compliance with the works (1) above and permanently take off site.

An appeal was submitted against this notice, enforcement officers have written up an appeal statement to defend their position on why it was served a notice, now awaiting for the planning inspector's appeal site visit and final decision.

Concerns were raised with the vacant unit, it is not within the planning enforcement function to control or enforce on it to be occupied as it is not a breach of planning. As the property is private, the council may not have jurisdiction over its occupation nor can force the owner to be used.

Land at 129 Pelham Road Wimbledon London SW19 1NZ

A notice was served for the unauthorised material change of use of the Land from ancillary car parking for use class E to commercial car park (sui generis).

The breach relates to the change of use of the land from B1 storage and ancillary use car parking to offices and working of motor vehicles and garages to the current use as a commercial car park in a residential area.

The land rear of 129 Pelham Road, is in South Wimbledon within a residential area. The site is within walking distance to Central Wimbledon, where there are good transport links and access by train, bus, tubes and multi-storey car parking facilities.

As mentioned above, the land was used through various uses such as ancillary staff car parking for the surrounding offices or parking of cars relating to a workshop/garage car repairs and ancillary cars to those businesses. They are restricted to either staff users or customers relating to the local business.

The land is currently being used as an unattended commercial car park open to the all of the public, operating from 7am -7pm. The running of engines of vehicles entering and leaving the site results in noise disturbance and the increase of air pollution to those who reside, work, visit and go to school in the area.

The commercial car park is sited within a residential area, walking distance to central Wimbledon where there are good connections to public transport and car parks. The car park has changed from class B1 storage and light industrial with ancillary staff car park (restricting car park access to staff only during office hours) to a unrestricted and unattended commercial car park operating 7 days a week outside working hours of 8am to 6pm Monday to Friday This has an adverse impact in terms of noise, air pollution, road and crime safety on local residents, those who work, visit and go to school.

The land is left unattended and abuts residential units which are easily accessed from the car park and is open to crime and anti-social behavior.

By the virtue of the siting of the land within a residential area being used in a commercial capacity is unsympathetic to the locality.

The commercial car park (sui generis) by reason of opening hours, unrestricted and unattended vehicle movements, noise, disturbance and increased opportunities for potential anti-social behaviour and crime fails to protect the amenity of nearby residential occupiers.

The unattended new car park use leads to unrestricted vehicle movements, and limited visibility splay entering/leaving the site on Pelham Road compromises highway safety for pedestrians and road users.

Requirements of the Notice

- To permanently cease the use of the land as a commercial car park (sui-generis).
- Permanently remove all paraphernalia relating to the new car park such as (but not limited to) advertising boards and directional signs.
- Permanently remove all materials, fixtures, fittings and debris associated in compliance with the works (1) above and permanently take off site.

An appeal was submitted against the notice, enforcement officers have written up an appeal statement to defend their position on why it was served a notice, now awaiting for the planning inspector's appeal site visit and final decision.

Broken telecoms cabinets Middleton Road/ Lilleshall Road Muchelney Road

A report was made with regards to Middleton Road/ Lilleshall Road Muchelney Road junction with regards to broken cabinets with a potential issue of s215 untidy land. Our officers went out on site to inspect to find the contact details to the telecommunications company Virgin Media who are responsible. The officer negotiated to fix these boxes without requiring any formal action. The matter resolved 2 months later as shown below and is a visual improvement to the streetscene and health and safety of the public.

Before



After



Land to the rear of 42 Tamworth Lane, Mitcham, CR4 1DA.

The council will re-serve a notice but to reinstate the garage and rear boundary adjacent to Acacia Road.

The planning enforcement team have been working with the police and anti-social behaviour team to find a solution to board up the site, the process is ongoing.

To summarise:

A s215 notice was issued on 10th May 2021. This notice requires compliance at the end of July 2021 requiring the Land to be tidied up / cleared.

The Land is again being fly tipped a further s215 Notice was issued on February 2023 including enclosing and clearing the untidy / overgrown Land.

The land was fully secured with hoarding following collaboration with the anti-social behaviour team, but rubbish accumulating again. April 2023, the council issued another warning letter by the waste team.

28 Oakleigh Way, Mitcham, CR4 1AL

This notice is intended to resolve the breach of planning control relating to the unauthorised conversion of the rear extension into a self-contained unit and rear canopy.

The conversion of rear extension to a self-contained unit would deliver one additional residential unit within the borough, which is a strategic objection of the Council. However, the local development framework also requires that development have a high quality design and form that responds to the local area, parking provisions should maintain the safe and efficient operation of the highway, and proposals should not adversely impact adjoining neighbours. Weighing up the merits of the scheme the proposal is considered unacceptable due to the standard of accommodation, impact on the local highway and absence of cycle and refuse storage.

The rear canopy is not be sympathetic in terms of massing, form or overall design. Although it is at the rear, it is assessed not to be sympathetic to its surroundings. It is inappropriate in terms of scale and design. Therefore it is considered expedient to issue the notice. The notice requires to cease the self-contained residential unit and to remove the canopy.

An appeal is in for this notice, enforcement officers have written up an appeal statement to defend their position on why it was served a notice, now awaiting for the planning inspector's appeal site visit and final decision.

8 Dahlia Gardens

On 16th August 2022 the Council issued an enforcement notice he unauthorised construction of an upper-floor extension to an existing detached outbuilding without the benefit of planning permission. This came immediately after the refusal of planning application for the same under ref no. 22/P1540.

What was single storey outbuilding was altered into a two storey outbuilding, and by reason of its design and form fails to blend and integrate well with its surroundings, is considered to be unduly dominant and visually intrusive, having a negative impact on the character and appearance of Dahlia Gardens and Hadley Road. It created unacceptable loss of light, privacy and outlook toward the adjoining properties along Dahlia Gardens and Hadley Road.

Officers conducted a Notice of Entry to visit in March to see works are not complied with the notice and a further letter of alleged offence in April 2023, the council will review next steps to potential prosecution for non-compliance of the said notice.

Successful Prosecution case-update

7 Streatham Road, Mitcham, CR4 2AD- Summary of the prosecution:

The Council served two enforcement notices on 6th June 2019 for the unauthorised outbuilding and roof extension, the enforcement notice required the outbuilding to be demolished and to clear debris and all other related materials. Following the non-compliance of said notices, this is a criminal offence which lead to prosecution proceedings.

The plea hearing took place at Lavender Hill Magistrates Court, where the defendant pleaded not guilty and the second hearing is due on the 14th January 2020.

A second hearing was held on 14th January 2020, and adjourned until 4th February 2020 in order for the defendant to seek further legal advice.

The defendant again appeared in court and pleaded not guilty, a trial date was set for 21st May 2020. Due to the Covid-19 pandemic this has been postponed. The case has been listed for a 'non-effective' hearing on Tuesday 14 July 2020, where a new trial date will be set.

This was postponed until another date yet to be given. The Council has now instructed external Counsel to prosecute in these matters.

The next 'non-effective' hearing date is 2nd October 2020. This date has been re-scheduled to 27th November 2020. This was again re-scheduled to 4th January 2021. Outcome not known at the time of compiling this report.

A trial date has now been set for 28th and 29th April 2021.

At trial the defendant changed his plea from not guilty to guilty on the two charges of failing to comply with the two Planning Enforcement Notices, however due to the current appeals with the Planning Inspectorate relating to two planning application appeals associated with the two illegal developments, sentencing was deferred until 7th October 2021 at Wimbledon Magistrates Court.

The two planning appeals were dismissed dated 5th October 2021.

Sentencing was again deferred until 16th December 2021 at Wimbledon Magistrates Court.

The result of the sentencing hearing was:

1. Fine for the outbuilding EN: £6,000, reduced by 10% so £5,400
2. Fine for the dormer EN: £12,000, reduced by 10% so £10,800
3. Surcharge: £181
4. Costs: £14,580
5. Total being £30,961. To be paid over a period of three years in monthly instalments.

The defendant was fined for the outbuilding and the dormer extensions due to non-compliance with two enforcement notices.

Latest

Enforcement officers have written to the landowner to state that The Council is minded to take direct action to undertake the works to secure compliance with the enforcement notices, pursuant to section 178, Town and Country Planning Act 1990 (as amended). This would result in further costs that would be recoverable from them directly.

To date the notice still has not been complied with, in October 2022, a meeting was taken place with a contractor to get quotes for the removal of both outbuilding and roof extension and rebuilding of the roof.

Quotes were received in November 2022 and discussions were had internally in view to accept one of the tasks involved to do it in stages due to budget reasons (removal of outbuilding first and then dormer and rebuild later), it is understood that any agreement of such works needs approval by the council.

An appeal has come in for the refused certificate of lawfulness for the outbuilding to be permitted development, awaiting the planning inspectorates decision on this.

The council warned about direct action to the owner and responded back in February that they have not complied with the notice yet and not able to, the council are looking into going ahead with direct action having obtained quotes from a suitable contractor.

3.4 Requested update from PAC

None

4. Consultation undertaken or proposed

None required for the purposes of this report

5 Timetable

N/A

6. Financial, resource and property implications

N/A

7. Legal and statutory implications

N/A

8. Human rights, equalities and community cohesion implications

N/A

9. Crime and disorder implications

N/A

10. Risk Management and Health and Safety implications.

N/A

11. Appendices – the following documents are to be published with this report and form part of the report Background Papers

N/A