

Committee: Council

Date: 18 September 2019

Wards: All

Subject: Strategic Theme – Sustainable Communities (Enforcement)

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead members: Councillor Tobin Byers, [Cabinet Member for Adult Social Care and Health and the Environment](#). Councillor Martin Whelton, [Cabinet Member for Regeneration, Housing and Transport](#). Councillor Caroline Cooper-Marbiah, [Cabinet Member for Commerce, Leisure and Culture](#). Councillor Edith Macauley MBE, [Cabinet Member for Voluntary Sector, Partnerships and Community Safety](#).

Contact officer: John Bosley, Assistant Director of Public Space

Recommendations:

1. That Council review and consider the content of the report.
 2. A review of enforcement areas that improve and underpin Sustainable Communities is undertaken with a view of establishing an internal departmental steering group to better coordinate activities and improve outcomes. Including a review of the regular publication of successful prosecutions on the Council's website.
 3. As part of the above recommendation and as outlined within 13.2, enforcement business areas assess the current use of information technology utilised for case management with a view to transitioning to the ECIN intelligence lead case management system if an evaluated benefit for the service is demonstrable.
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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 Environment and Regeneration Directorate.
- 1.2 The portfolio holders are [Councillor Tobin Byers](#) for Adult Social Care. Health and the Environment; [Councillor Martin Whelton](#) for Regeneration, Housing and Transport; [Councillor Caroline Cooper-Marbiah](#) for Commerce, Leisure and Culture; and [Councillor Edith Macauley MBE](#), Cabinet Member for Voluntary Sector, Partnerships and Community Safety. 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 It should be noted that the following report follows from the noteworthy reports about this subject matter;
 - a) Report and recommendations arising from a scrutiny review of Council enforcement policies – Overview and Scrutiny Commission November 2006 ([report](#))
 - b) Scrutiny Review of Council Enforcement Policies: Update on Action Plan 2009 ([report](#))

- c) Update on work of E&R Enforcement Review Task Group - Sustainable Communities Overview & Scrutiny Panel; March 2011, April 2012 ([2011 report](#) & [2012 report](#))
- d) Overview and Scrutiny Commission – Enforcement September 2015 ([report](#))

1.4 The above reports have provided the basis of the policy and principles the department applies to its current enforcement approach within respective service areas, including 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 ([Council Wide Enforcement Policy](#)).

2. BACKGROUND

2.1 The use of enforcement is fundamental 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 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 coordinated management of enforcement has had a dynamic history with the Joint Tasking Group (JTG) having been introduced in 2005 to enable a strategic focus on solving borough-wide issues. This approach was reviewed and was transformed into the Local Multi-Agency Problem Solving (LMAPS) group, which engaged local agencies such as the Police and was community focused by covering three (3) distinct areas in the borough. LMAPS has since evolved to Location Boards, which are now co-chaired between the Police, London Fire Brigade (LFB) and the Head of Community Safety, while also including attendance by a range of internal and external partners. The current work being tabled at this board includes serious violence with a knife crime focus, ASB enforcement, thefts of motor vehicles, burglary and issues in Mitcham Town Centre involving drugs and alcohol.

2.5 During this period, the Enforcement Review Task Group (ERTG) was formed in 2013 and ran alongside the LMAPS group, but consisted of internal officers and focused solely on enforcement issues. The ERTG was eventually disbanded and its remit

merged into Location Boards due to the structural changes with the teams and the changing priorities of the services and associated resources.

2.6 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, protects 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.

2.7 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.

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.

3. THE LEGAL FRAMEWORK APPROACH TO ENFORCEMENT

3.1 The legal frameworks that support the regulatory and enforcement functions undertaken by the council are extensive, nuanced and often complex. In appendix 1, there are 140 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.

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. 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.
- 3.16 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.
- 3.17 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.
- 3.18 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 IN MERTON

4. Waste and Street Environment

- 4.1 Waste within the public realm and, in a limited way, on private land is managed 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 The two primary focus areas within enforcement that relate to the waste service involve fly-tipping and littering.
- 4.4 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.

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.

Fig. 1

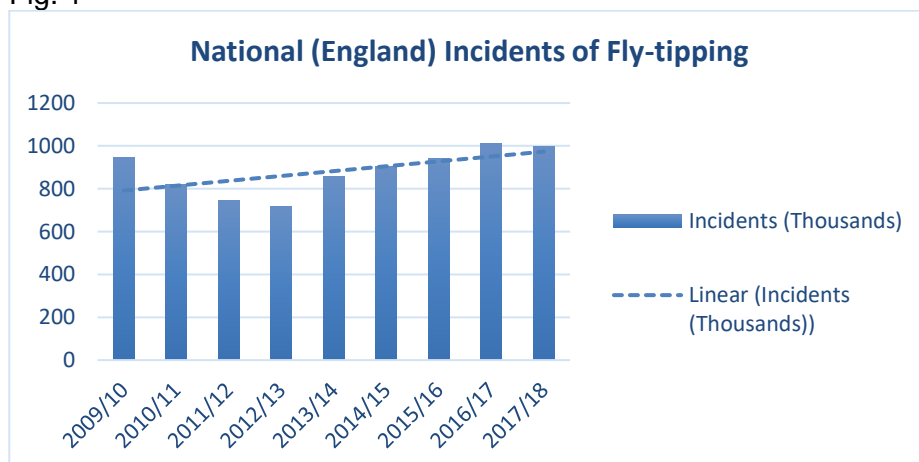
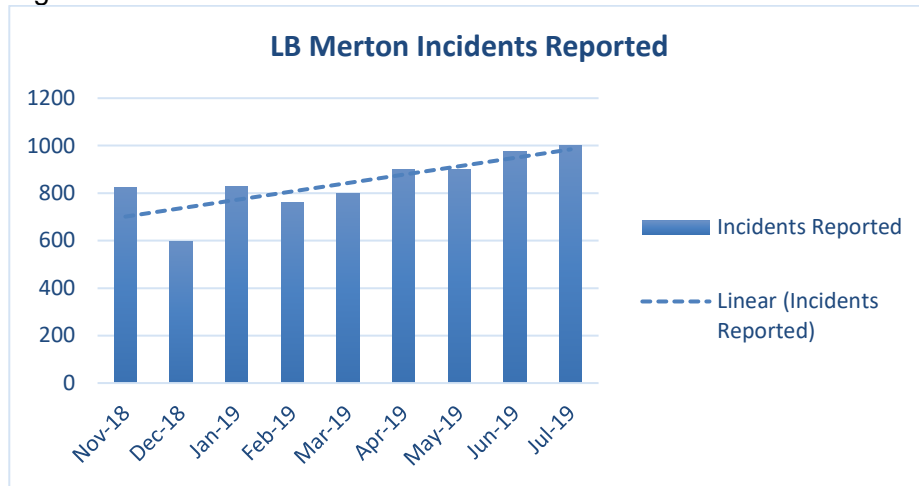


Fig 2.



4.5 The service has recently prepared a *draft Fly-tipping Strategy* (the Strategy) with the primary aim of the 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*

4.6 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.

4.7 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 emerging *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.

4.8 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.

4.9 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, alarm noise (no nominated key-holder), Noise Act offences, nuisance parking, abandoning a vehicle, unauthorised distribution of free literature on designated land along with evidence gathering from domestic fly-tipping (abandoned waste)

As part of an increased service offer and to ensure that we maximise the benefits of an external resource it is proposed that we also include areas of work which can be delivered through a schedule of rates. This will include but not limited to:

- Enforcement of Merton's PSPOs with and without police/wider LBM support
- Issuing of Community Protection Warnings and Community Protection Notices for PSPO and some ASB related matters where a FPN cannot be used
- The collation and provision of intelligence to the Safer Merton and wider Community Safety Partnership including the provision of photos, Section 9 witness statements and other evidential requirements
- Working with Safer Merton officer and representatives of the Police force in tackling knife crime and inspecting known locations for the storage of illegal weapons.
- Provided enforcement and security resource for medium to large scale events held in the borough such as music festivals and sporting events

4.10 Below are graphs of our performance within London as reported to the Department for Environment Food and Rural Affairs (DEFRA).

Fig. 3

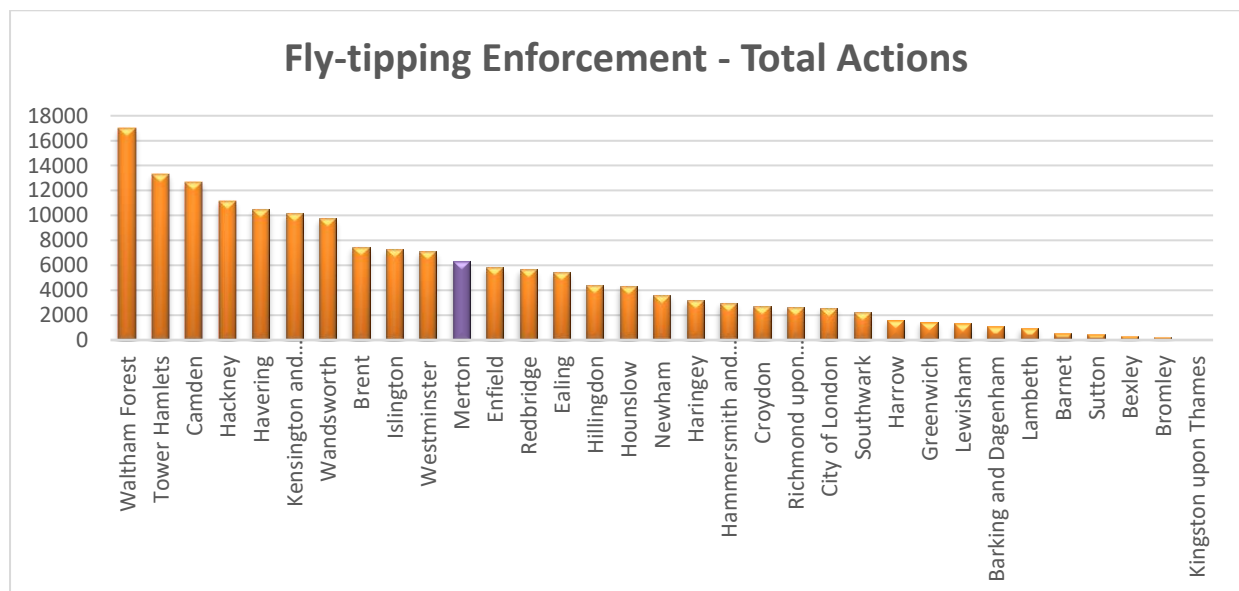


Fig. 4

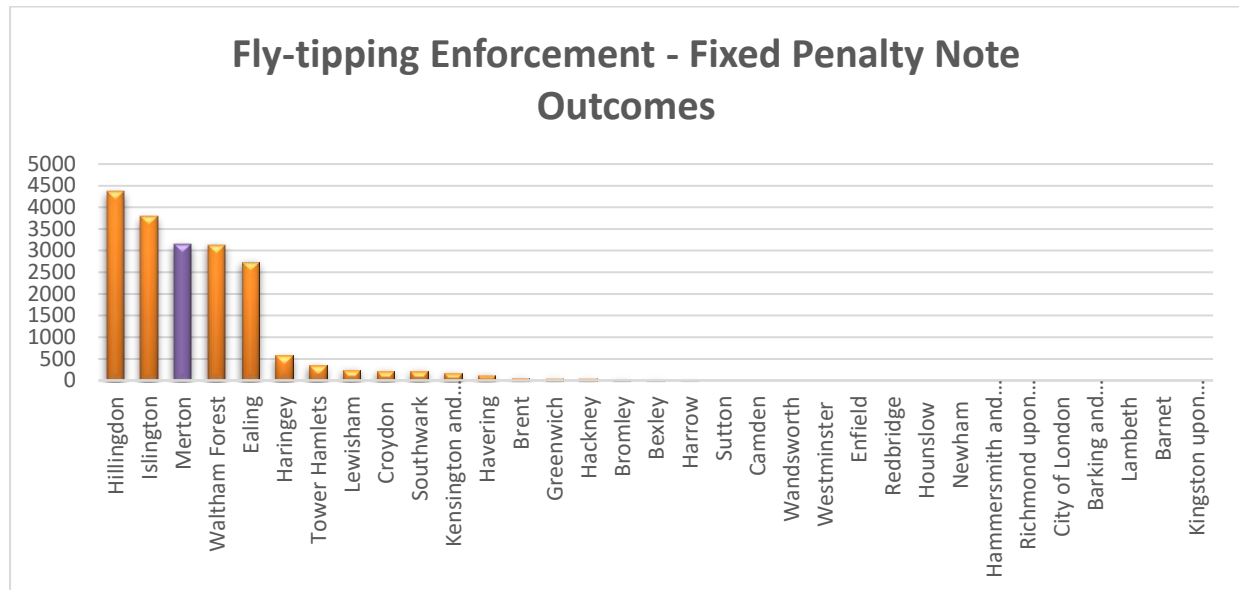
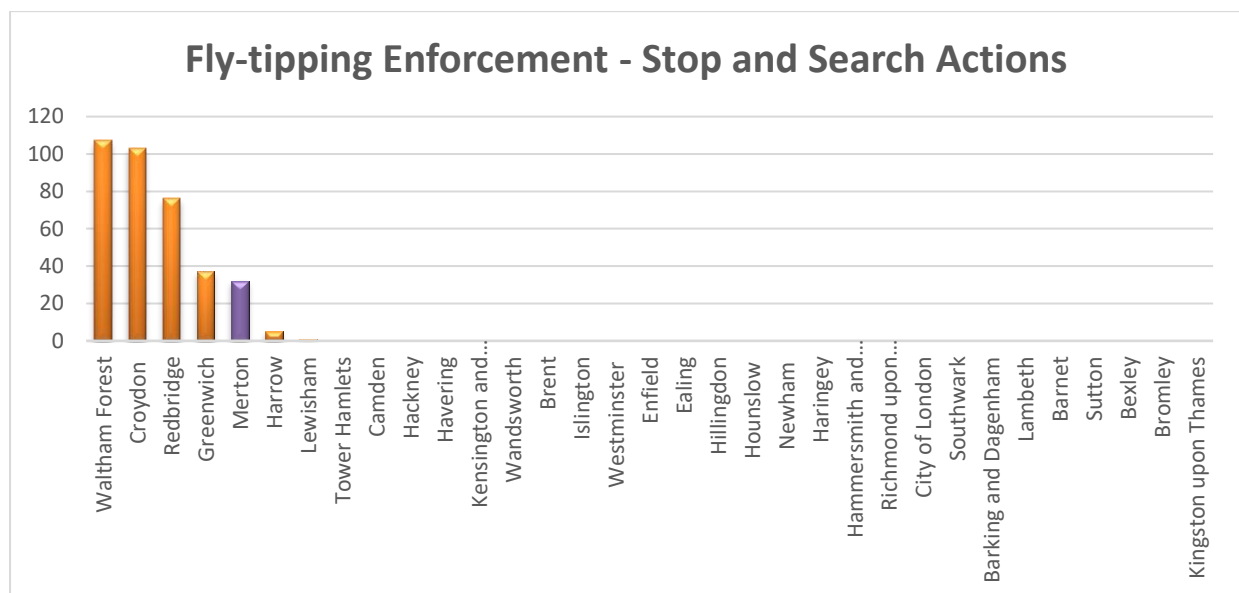


Fig 5.



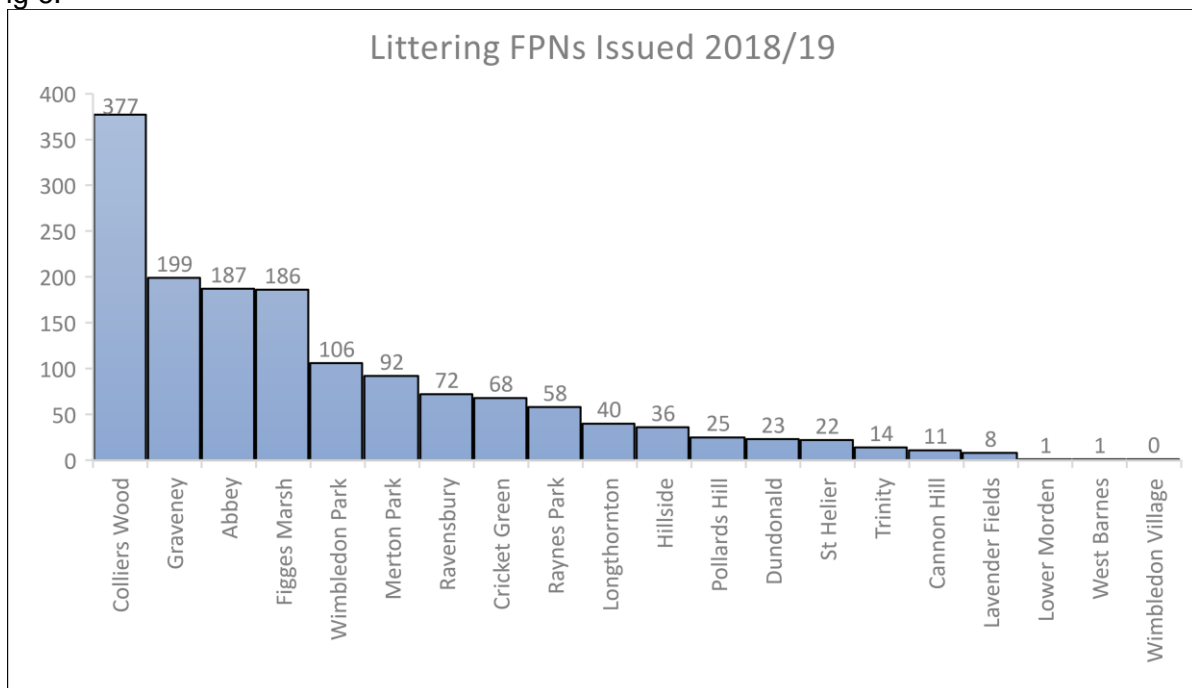
4.11

As outlined in Fig. 3 and Fig. 4, the Council's 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 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, directly 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 ineffectual. 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.

4.12 In Fig. 3, Merton's lower position (top 10 within London) is due to our lower reliance on the sending of warning letters pertaining to partial evidence being secured following 'in-field' investigations. The success rate of in-field investigations is notoriously low as the type of waste often deposited is consistently one material or bulky in nature (i.e. garden waste or furniture). Within an average operational month, the waste enforcement team may inspect in excess of 400 deposited waste sacks and issue, on the basis of evidence found, no more than 20-25 FPNs. The *Fly-tipping Action Plan*, being developed with Councillor input, will review internal systems to determine what sustained improvements can be made.

4.13 In March 2020 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 and at 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 concession contract element which is self-funding. This would provide the borough with further resource to tackle this issue.

Fig 6.



5. TRADING STANDARDS

5.1 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.

5.2 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 saves time, reduces costs and ensures that resources are allocated to the most significant areas of work that affect residents, businesses and the community as a whole.

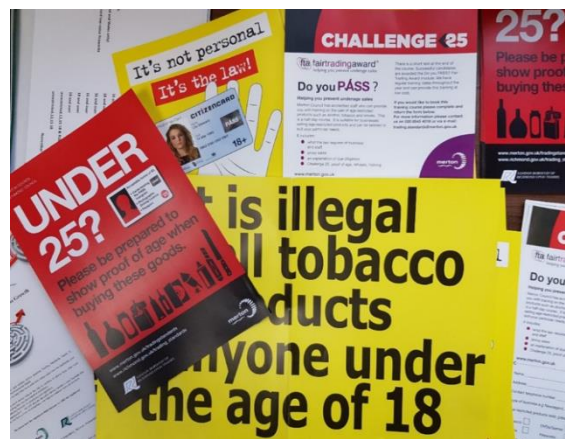
5.3 We operate to a core service specification and our current priorities are:

- 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'

5.4 Appendix 2 provides an example of a successful rogue trading prosecution case.

Age Restricted Sales

5.5 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. Activity in this priority area directly affects the future health and wellbeing of residents.



5.6 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.

5.7 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 window of three months in which the test purchase will take place.

5.8 Businesses are encouraged to operate a Challenge 25 policy and request age verification identification from all customers who they believe to be Under 25.

5.9 In 2018/19, 95 test purchases were carried out by young people under the age of 18 closely supervised by Trading Standards staff and 17 retailers attended 'Do You Pass' accredited training provided by us to promote compliance. The tables below provide further details including work undertaken to date in 2019/20.

5.10 Test purchases and training

	Alcohol	Tobacco	Knives	DVD	Fireworks	DYP	Total
2018/19	37	33	23	0	2	17	112
2019/20*	8	9	24	0	0	3	44

5.11 Sales to young people

	Alcohol	Tobacco	Knives	Fireworks	Total	Failure rate
2018/19	1	1	1	0	3	3%
2019/20*	0	0	2	0	2	5%*

**Year to date*

5.12 Test purchasing is conducted in accordance with the Regulation of Investigatory Powers Act and the Department for Business Innovation and Skills Code of Practice on Age Restricted Products and Services. Sales to young people are investigated in accordance with PACE and product specific legislation.

5.13 Knife sales to young people remain a particular concern with an alarming increase in knife crime in London with around 40 offences committed daily across the Capital. There were 30 fatal stabbings on London's streets in the first 4½ months of 2019, with a significant number of suspects being under 18.



5.14 It has been a criminal offence to sell a bladed item (except a folding pocket-knife with a blade not exceeding 7.62 cm) to a person under 18 years old since 1988 (The Criminal Justice Act 1988).

5.15 Contribution to Safer Merton's Knife Crime Action plan in 2018/19

- ✓ 100% inspection of all knife retailers in the borough providing practical advice, support and guidance on the sale of knives including placement advice, precautions and reasonable steps that can be taken to secure compliance and prevent the sale of knives to young people.
- ✓ Free practical training sessions to all knife retailers, precautions and reasonable steps to secure compliance and prevent the sale of knives to young people.
- ✓ Follow up test purchasing to a minimum of 25 retailers who have received advice and/or free training to assess compliance.
- ✓ Participation in the multiagency Safer Merton knife crime event 'Communities and knife crime - working together to keep Merton safe' to highlight our work.

Knives - recent developments

- 5.16 A Responsible Retailers Agreement (RRA), backed by the Mayor of London, the Police and London Trading Standards, will be launched across London. All knife retailers will be invited to sign-up to the RRA. Signatories will have to comply with requirements including staff training and good practice.
- 5.17 The Offensive Weapons Act 2019 (2019 Act) received Royal Assent on 16th May 2019 and introduces mandatory age verification at the point of delivery for knives sold online, and bans the delivery of knives to lockers.
- 5.18 Enforcing these new requirements will present a significant challenge to the service, particularly given uncertainty about the timings of deliveries and the need for officers to witness the delivery to assess compliance.
- 5.19 To date there has been no announcement of new burdens funding to support Trading Standards implementation of the 2019 Act.
- 5.20 Ongoing work for 2019/20
- ✓ 100 advisory visits to businesses to promote age restricted sale compliance.
 - ✓ Training courses for business.
 - ✓ 100 test purchases/interventions.

6. PLANNING ENFORCEMENT

- 6.1 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).
- 6.2 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.
- 6.3 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.
- 6.4 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 and will include a reference number pertaining to the particular enquiry.
 - An initial investigation, including a site visit, will be undertaken between three (3) to twenty (20) working days, depending on the nature and severity of the alleged breach.
 - 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.

6.5 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.

Fig. 6

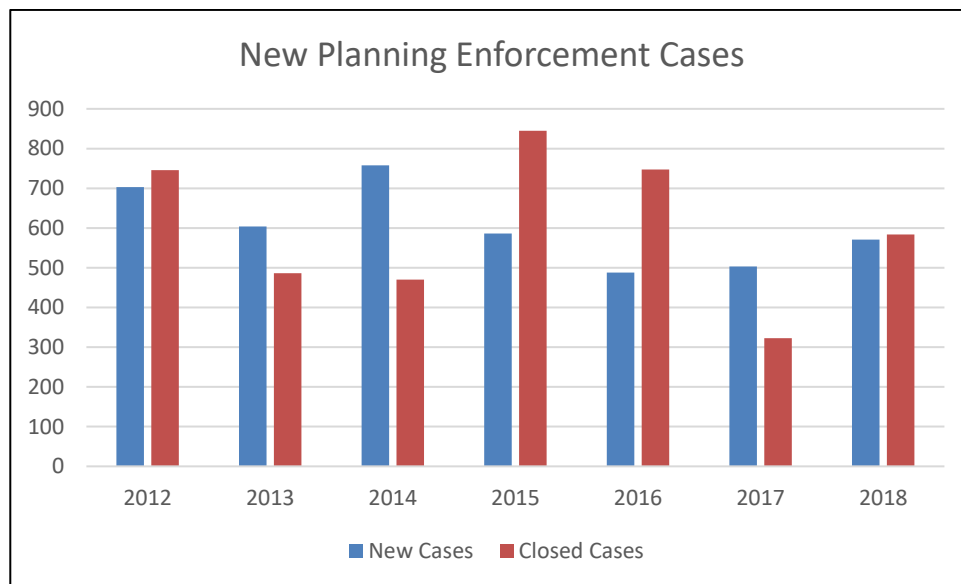


Fig. 7



- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 Currently the enforcement team is undertaking a significant improvement programme. Following a number of years of difficulties in recruitment and retention of suitably qualified staff and an overall reduction in the team size, enforcement investigations were not being undertaken in a timely manner, resulting in a significant backlog developing:
- In order to combat this, the service is reviewing the deliverability of several service enhancements;
 - Implement mobile working solutions by moving cloud based solution that will allow appropriate equipment to deliver on full mobile working.
 - 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.
 - Improved education of our residents through improving the content and quality of the information available. This will be coupled with a formal enforcement policy to better define for residents the intervention criteria used.
 - Potential benefits of reviewing Shared Service opportunities with neighbouring authorities. Previously, work in this area identified relevant improvements in the functioning of the website and also common recruitment collaboration.
- 6.10 In the immediacy, additional resources have been allocated to the team and an additional 2 staff recruited with the ambition of eliminating the backlog of cases within the financial year. The enforcement team have set an ambitious target to reduce the outstanding number of cases from nearly 1000 to 450 before the end of the financial year. This will reduce the 'backlog' (defined as cases over 1-year-old) from 550 to less than 100. Significant progress is being made with the challenging target of 130 total closures per month, with projections for September on track. Monitoring of closed cases targets is being undertaken on a weekly basis to ensure any slippage is identified early in the process. In order to achieve the target, one temporary member of staff has been employed and Capita is being utilised to provide the equivalent of 2 additional staff. Staff have been provided with individual targets and team meetings have been arranged to monitor progress. It is anticipated that once the project is complete the existing team will have been left with around 450 live enforcement cases (i.e. those less than one (1) year old).

7. Housing Enforcement

- 7.1 The Housing Enforcement Team forms part of the Housing Service under the Community and Housing Directorate. The team deals with environmental health housing functions in relation to residential properties. Within the team there are a variety of separate but interrelated functional areas. These include:

- Improvements of housing standards in the private rented sector
- Operating the Mandatory Licensing of Houses in Multiple Occupation
- Managing the Disabled Facilities Grant Funding
- Investigation and resolution of Public Health /Drainage related matters
- Statutory nuisance (excluding Pollution related complaints)
- Pest Control as determined by statutory duties

7.2 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. 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.

7.3 There are a range of enforcement options available to the Housing Team which are set out below:

7.3.1 Informal Action (Preliminary Notices)

Formal action under the Housing Act 2004 may be preceded by the service of preliminary notices by which the Council sets out a proposed schedule of works and time scales for completion of the work. These notices invite landlords to make representation if they disagree with the requirements of the notice, or if they wish to suggest an alternative course of action.

7.3.2 The preliminary notice invites landlords to complete an undertaking stating that they agree to the required works and the proposed timescales. If an undertaking is received, no further action will be taken provided the undertaking is not breached. The preliminary notice advises the landlord that a statutory notice will be served in 21 days if an undertaking is not received or if they do not make a representation. The statutory notice will detail the same works as outlined in the preliminary notice. With statutory nuisance and public health issues there is no provision for preliminary notices. In cases where action is required immediately the Council serves a notice in the first instance (e.g. blocked drains and statutory nuisance).

7.3.3 Statutory Action; the Housing Act 2004, the Housing Act 1985 (as amended) and the Environmental Protection Act 1990 are the principal Acts covering statutory action taken.

8. Privately Rented Property

- 8.1 Properties are inspected using the housing health and safety rating system 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.
- 8.2 The main statutory notices/orders used are as follows in these areas are included in Appendix 1.
- 8.3 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.
- 8.4 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.
- 8.5 The Council may as an alternative to prosecution, serve notices imposing civil penalties of up to a maximum of £30,000. Cabinet approved a Civil Penalties Policy and Rent Repayment Order policy in June 2019
- 8.6 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.
- 8.7 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.

9. Licensing of Houses in Multiple Occupation (HMOs)

9.1 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

9.2 The new definition for Mandatory Licensing removes the 3-storey requirement which means that a HMO will fall within the mandatory licensing regime if it:

1. Is occupied by 5 or more persons;
2. Is occupied by persons living in two or more separate households; and
3. Meets:
 - a) The standard test;
 - b) The self-contained test but is not a purpose-built flat situated in a block comprising 3 or more self-contained flats; or
 - c) The converted buildings test.

9.3 The included properties are:

9.3.1 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.

9.3.2 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.

9.3.3 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.

9.4 Each individual HMO is required to be licensed and not the building within which the HMO is situated. The Council continues to explore the introduction of a selective licensing scheme for Merton. Such a scheme, if introduced would be likely to make Merton a “better place to rent” and have benefits for the wider community including:

- Significantly improving property conditions and the management of privately rented properties
- Helping thousands of tenants to live in safer, more secure and better quality homes
- Providing residents with a more desirable place to live in and enjoy
- Ensuring our communities have stronger and safer neighbourhoods
- Encouraging more professional landlords
- Protecting and encouraging new investment across the borough

9.5 Good news stories have been a renewed focus on housing enforcement in the private rented sector, with a particular emphasis upon HMOs. This has led to Council achieving a successful landlord prosecution.

- 9.6 A Landlord from Streatham pleaded guilty to failing to register a house in multiple occupancy, known as an HMO, at Lavender Hill Magistrates Court on 6 August 2019. The Court imposed a fine of £1,960 for the breach of the Housing Act 2004 (2004 Act) and ordered him to pay prosecution costs of £1,750, in addition to a victim surcharge of £197.
- 9.7 Other cases are being progressed through the courts and a further case will be heard in the Magistrates Court on 10th September 2019 for breaches of the requirements of the 2004 Act relating to the condition of an HMO. Both these prosecutions were brought by the South London Legal Partnership, the Council's Shared Legal Service (the SLLP).
- 9.8 In addition to its role of enforcing standards in the private rented sector, officers provide advice and assistance on homelessness and its prevention. Many people are concerned about a risk of homelessness they approach the Council and seek practical advice and assistance to help them remain in their accommodation or secure alternative accommodation. Officers provide Housing Advice on the issues which may help to prevent people from becoming threatened with homelessness, such as tenants' rights and rights of occupation; illegal eviction; rights to benefits; how to protect and retrieve rent deposits; rent and mortgage arrears; help available to people at risk of violence and abuse; and grants.

10. Environmental Health

- 10.1 Environmental Health covers a wide range of enforcement responsibilities including:

Air Pollution Control	Occupational health & safety
Smoke Free enforcement	Food hygiene, safety and standards
Noise control	Private water supplies
Environmental nuisance	Infectious disease investigations
Contaminated land	Control of rodent infestations
Industrial pollution control	

- 10.2 Environmental Health services operate on an intelligence led approach to service delivery that seeks to protect the general public, the environment and groups such as consumers, residents and tenants, workers and businesses.
- 10.3 The enforcement activities of Merton's Environmental Health Officers are carried out in a proportionate and consistent manner through routine risk-based inspections 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
- 10.4 The legislation under which Environmental Health works is extensive with some statutes dating as far back as 1949. The powers available to Environmental Health Officers include:

- **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
- **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.
- **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.
- **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.
- **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.
- **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.

10.5 **Food hygiene, safety and standards** and the informing legislation is predominantly based on EU Regulations such as Regulation 178/2002. These Regulations provide the general principles of food safety and food law which food businesses must comply. These Regulations have been transposed into the Food Safety and Hygiene (England) Regulations 2013. 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.

10.6 In July and December 2017 a number of investigations took place following complaints received from members of the public, who had purchased food from the Mitcham and Morden outlets of the same supermarket chain, which had been gnawed by mice. These investigations were followed up with the premises being closed by officers until extensive pest control measures were put in place. A prosecution was brought before the Court in November 2018. The company pleaded guilty to six offences, which included the sale of unfit food, and hygiene offences. The Judge took a serious view of the matter imposed a fine of £70,000 for each of the six offences, totalling of £420,000.

The Company was also ordered to pay the Council's costs of £10,100. This prosecution was brought by the SLLP.

10.7 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.

10.8 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.

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

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.

10.9 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.

10.10 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

10.11 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

10.12 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

10.13 **Case report:** A routine visit to this very busy Japanese takeaway in Wimbledon by an Environmental Health Officer found mice activity in the kitchen, poor standards of cleanliness and due to the cramped arrangements, a substantial risk of cross-contamination from raw chicken to the ready to eat sushi.

A voluntary agreement to stop the production of sushi at the premises was entered into. The owner called a consultant in to redesign the flow of food production, the kitchen was deep cleaned and the staff retrained in the new food safety management system. During the initial visit, it was found that a ladder was being used in an unsafe manner to gain access to the first floor kitchen roof and a Prohibition Notice was served under the 1974 Act prohibiting its use.

11. Licensing

11.1 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

11.2 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

- 11.3 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
- 11.4 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.
- 11.5 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 Eastern Electrics event held at Morden Park.
- 12. Safer Merton**
- 12.1 Demand placed on Anti-Social Behaviour (ASB) services is increasing across the administrative areas of both the Council and the Metropolitan Police Service.
- 12.2 Safer Merton’s ASB service has dealt with, and resolved, some 1237 cases in the last 12 months (July 2018 – June 2019). This is an increase of some 363 cases compared with 874 in the previous 12 months, representing a 34.4% increase.

Fig. 8 – **Anti-social Behaviour Enforcement**



12.3 **Results** - Over the last 12 months the Safer Merton has undertaken significant enforcement with partners around a range of ASB issues resulting in:

- ☑ Four (4) brothel closures
- ☑ One (1) premise closure for disorder – Loud partying, congregation, intimidation, littering and illicit drug activity –
The above were closed under the ASB Crime and Policing Act 2014
- ☑ Four (4) Criminal Behaviour Orders,
- ☑ Seven (7) injunctions
- ☑ Four (4) restraining orders
- ☑ Six (6) community protection notices
- ☑ Twenty-three (23) community protection warnings
- ☑ Twenty-four (24) non-molestation orders

13. **Parking Enforcement & Blue Badge Enforcement**

13.1 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.

Our Parking enforcement policies are published on our web pages and provide additional information:

<https://www.merton.gov.uk/streets-parking-transport/parking/enforcement>

13.2 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

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.

- 13.3 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.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 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.

Number of enforcement actions:

PCN Type	2018/19
PCN - On street CEO	55,142
PCN - Off street CEO	12,988
PCN - MTC	63,124
PCN – Bus Lane	21,011
PCN – School (Attended)	372

- 13.8 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.

Blue Badge Enforcement

- 13.9 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.
- 13.10 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.
- 13.11 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.
- 13.12 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
- 13.13 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.

14 FUTURE STEPS AND PRIORITIES

- 14.1 Within waste enforcement, the future review and potential investment in a more up-to-date enforcement IT solution will enable the current resource team to increase the level of formal written warning letters issued. The data gathered through this will enable better, intelligent led enforcement, while also improving our ability to spot trends of potential serial offenders. As per 14.2, it is intended that the service will be review the potential benefit to utilise the new case management system.
- 14.2 The Safer Merton service has recently procured and introduced a new intelligence lead case management system ECINs. ECINS draws together intelligence on people, place, vehicles, phone numbers and associations allowing mapping to occur. The use of intelligence lead enforcement, with partners, could be channelled via Safer Merton as multi-agency tasking and working is synonymous with this team.

The ICT solution does not have limits on user numbers and as such can be rolled out quickly and effectively over the Council

15. ADVICE/RECOMMENDATIONS OF RELEVANT OVERVIEW AND SCRUTINY PANEL

15.1 During the last municipal year and so far during the current, the Sustainable Communities Overview and Scrutiny Panel has undertaken the following activity related to its sustainable communities' remit:

15.2 Cabinet Member priorities: The Cabinet Members for Regeneration, Housing and Transport along with Adult Social Care, Health and the Environment updated the panel on their priorities and responsibilities. Areas that were highlighted included Air Quality, Housing Strategy, improving recycling and the need to focus on street cleaning, abandoned waste and fly tipping in the borough.

15.3 Performance monitoring: reviewing progress against the set priorities for the Environment and Regeneration Department (and Community and Housing where appropriate) is an essential part of the Panel's remit. Items highlighted include the enforcement of blue badges, the decline in street cleanliness standards and the backlog of building control enforcement cases.

15.4 Waste, recycling and street cleaning
Monitoring the performance of the waste, recycling and street cleaning contract has formed another significant part of the Panel's work. This topic featured on four agendas in the last municipal year. There has been increased input from residents and the involvement of Veolia representatives allowing the Panel to highlight key concerns and look in depth at how these are being addressed.

15.5 Planning enforcement: Members received detailed updates on the performance of planning enforcement and although there is still a backlog of cases, Panel members noted that the dip in performance was formally addressed and targets are now being accomplished. The team has been stabilized with permanent staff and greater efficiencies in I.T continue to be explored. Panel Members resolved to continue receiving trend data on the number of planning enforcement cases that are more than six months old.

15.6 Strategic approach to parking charges: The Sustainable Communities Overview and Scrutiny Panel took an active role in examining the strategic approach to parking charges. The Panel made multiple recommendations on this subject and raised issues for consideration by Cabinet such as how public transport accessibility issues will be addressed and whether additional evidence was required to demonstrate that increasing parking charges results in a decrease in traffic. The Panel conducted pre-decision scrutiny of the results of the parking charges consultation and subsequently recommended they be given an opportunity to carry out pre-decision scrutiny of the findings of the 6-12 month review that will be carried out if Cabinet approve the implementation of the new charges.

15.7 The Overview and Scrutiny Commission has continued to hold the Police and Safer Merton to account in relation to crime, policing and anti-social behaviour over the last year. The BCU Commander has attended scrutiny twice in the past year to provide the latest crime data and answer questions on a wide range of issues including stop and search, anti-social behaviour, gangs and knife crime, street drinking (including the use of public space protection orders) as well as preventative work including the work of police officers in local schools.

16. CONSULTATION UNDERTAKEN OR PROPOSED

16.1 None for the purposes of this report.

17. TIMETABLE

17.1 None for the purposes of this report.

18. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

18.1 None for the purposes of this report.

19. LEGAL AND STATUTORY IMPLICATIONS

19.1 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.

20. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

20.1 The Council's Overarching Enforcement Policy as per section 5.2 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).*

21. Crime and Disorder implications

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

22. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

22.1 None for the purposes of this report.

23. BACKGROUND PAPERS

- **COUNCIL WIDE ENFORCEMENT POLICY - [LINK TO DOCUMENT](#)**
- **THE REGULATORY SERVICES PARTNERSHIP POLICY ON ENFORCEMENT - [LINK TO DOCUMENT](#)**
- **SAFER MERTON AND ENFORCEMENT PRIVACY NOTICE - [LINK TO DOCUMENT](#)**
- **PLANNING ENFORCEMENT REGISTER - [TO WEB PAGE](#)**
- **PARKING SERVICES ENFORCEMENT POLICY - [LINK TO DOCUMENT](#)**
- **TRADING STANDARDS ENFORCEMENT POLICY - [LINK TO DOCUMENT](#)**
- **HOUSING ENFORCEMENT POLICY 2019 – 2024 (DRAFT) - [LINK TO DOCUMENT](#)**
- **FLY-TIPPING STRATEGY (DRAFT) - [LINK TO DOCUMENT](#)**

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

APPENDIX 1. LIST OF RELEVANT LEGISLATION

APPENDIX 2. ROGUE TRADER PRESS RELEASE

APPENDIX 3. PUBLIC PROTECTION, PUBLIC SPACES AND SUSTAINABLE COMMUNITIES PERFORMANCE INFORMATION (JULY 2019 AND YTD)