

Overview & Scrutiny Committee

Monday 24 May 2010

7.00 pm

Town Hall, Peckham Road, London SE5 8UB

Membership

All members of the council.

(Annual Council Assembly on Wednesday 19 May 2010 will agree the size, composition and terms of reference of the committee and appoint the chair and vice-chair. Following the Annual Council Assembly meeting the political groups will formally nominate to places on the committee.)

Education representatives

Reverend Nicholas Elder
Colin Elliott
Jane Hole

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Contact

Peter Roberts on 020 7525 4350 or email: peter.roberts@southwark.gov.uk

Members of the committee are summoned to attend this meeting

Annie Shepperd

Chief Executive

Date: 14 May 2010



Overview & Scrutiny Committee

Monday 24 May 2010
7.00 pm
Town Hall, Peckham Road, London SE5 8UB

Order of Business

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	In special circumstances, an item of business may be added to an agenda within five clear working days of the meeting.	
3.	DISCLOSURE OF INTERESTS AND DISPENSATIONS	
	Members to declare any personal interests and dispensation in respect of any item of business to be considered at this meeting.	
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DISCUSSION OF ANY OTHER OPEN ITEMS AS NOTIFIED AT THE START OF THE MEETING.

Item No.

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Page No.

PART B - CLOSED BUSINESS

**DISCUSSION OF ANY CLOSED ITEMS AS NOTIFIED AT THE START
OF THE MEETING AND ACCEPTED BY THE CHAIR AS URGENT.**

Date: 14 May 2010



OVERVIEW AND SCRUTINY COMMITTEE

MINUTES of the Overview and Scrutiny Committee held on Monday 8 March 2010 at 7.00 pm at Town Hall, Peckham Road, London SE5 8UB

PRESENT: Councillor Fiona Colley (Chair)
Councillor Jane Salmon
Councillor Toby Eckersley
Councillor John Friary
Councillor Barrie Hargrove
Councillor Adedokun Lasaki
Councillor Richard Thomas
Councillor Veronica Ward
Councillor Lorraine Zuleta

OTHER MEMBERS PRESENT: Councillor Robert Smeath

OFFICER SUPPORT: Shelley Burke, Head of Overview & Scrutiny
David Lewis, Investment Manager, Environment & Housing
Maurice Soden, Regeneration Initiatives Manager
Peter Roberts, Scrutiny Project Manager

1. APOLOGIES

1.1 Apologies for absence were received from Colin Elliott, Parent Governor, and for lateness from Councillor John Friary.

2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

2.1 The chair accepted the following final scrutiny reports as late and urgent items:

- Item 9, Consultation Report (Health & Adult Care)
- Item 10, Early Years (Children's Services & Education)
- Item 11, Parental Engagement (Children's Services & Education)

3. DISCLOSURE OF INTERESTS AND DISPENSATIONS

- 3.1 The chair declared a personal and prejudicial interest in item 5, the councillor call for action, having taken part in the decision taken at Nunhead & Peckham Rye Community Council. She left the meeting during discussion of this item. Councillor Veronica Ward declared non-prejudicial interests in the final scrutiny reports on Early Years and Southwark Circle, as a governor of Dulwich Wood Children's Centre and as chair of Southwark Pensioners' Centre respectively.

4. MINUTES

RESOLVED:

That the minutes of the open sections of the meetings held on 11 January and 1 February 2010 be agreed as a correct and accurate record.

5. COUNCILLOR CALL FOR ACTION

- 5.1 The chair, Councillor Fiona Colley, withdrew from the meeting during consideration of this item. The vice-chair, Councillor Jane Salmon, took the chair.
- 5.2 Councillor Robert Smeath presented the councillor call for action. He queried the length of time it had taken for the community council to reach a decision and whether officer advice had clearly reflected the evidence received, particularly in presenting the results of consultation. Councillor Smeath felt that responses to consultation on the options of a split site or a multi-use centre had been pretty close in terms of preference but that this had not been adequately presented.
- 5.3 Members asked Councillor Smeath what he had done, in accordance with the steps set out in the protocol, to attempt to resolve the issue. Councillor Smeath replied that during meetings of the community council he had asked officers to clarify what was going on. He explained that, although a decision had been taken and work was underway, he was not happy with the way the decision had been reached.
- 5.4 In response to further questions Councillor Smeath reported his understanding that the community council had been making a recommendation to the executive. The head of overview & scrutiny clarified that the community council had been taking an executive decision. Councillor Smeath took the view that the council's constitution had been breached in that evidence had been presented by officers in a possibly misleading way. He questioned the grounds for appointing the successful bidder and was concerned that the facility being built was not as good as it might have been.
- 5.5 Members stressed the requirement for the committee to consider whether or not a member promoting a call for action had taken all other steps to resolve the issue. Members acknowledged the action taken by Mr Mick Barnard but some were of the view that Councillor Smeath had not fully pursued all the paths open to him as a councillor. Councillor Smeath was not confident that he would have achieved a

different outcome if he had pursued the issue independently. Some members stressed that it was important for the call for action protocol to be followed and suggested that Councillor Smeath should approach the relevant officer and executive member and the monitoring officer.

RESOLVED:

That the councillor call for action not be accepted on the grounds that not all the steps set out in the protocol have been followed.

(Councillor Barrie Hargrove requested that his vote against this decision be recorded in the Minutes.)

6. HALF YEAR BUSINESS REPORT 2009/10 - FOLLOW-UP

- 6.1 The regeneration initiatives manager updated the committee on affordable homes. He explained that the three year target had been agreed through the local area agreement prior to the recession and that the council was now in the process of negotiating a reduction with the department for communities and local government. He also indicated that the targets set out in the London Plan were due to be reached by 2017. In overall terms this required an average of 16,300 homes per year of which at least one third would be affordable. In response to questions from members, the regeneration initiatives manager confirmed that changes in the approach to the housing and communities agency grant were referred to within the council's housing strategy.
- 6.2 The investment manager, environment and housing, reported the position in terms of the decent homes programme, that the council would only be a little short of the year end target. He clarified that the figures were based on the number of properties where works had been completed.
- 6.3 In response to questions the investment manager explained that the executive was due to consider proposals for five-year partnering contracts, part of the benefit of which would be to address the current stop/start nature of delivery. As a comparison, he explained that the current Peckham Partnering Contract had achieved 90% resident satisfaction. It was hoped that the new contracts would achieve improved communication, reduced costs and faster and higher standards of delivery. An internal reorganisation would strengthen the client side, creating dedicated contract teams.
- 6.4 Members queried the timetable for completion of the stock condition survey and investment programmes. The investment manager explained that the current survey was due to finish but that the condition of stock was continually changing and it was important to keep on top of the council assets. The survey would inform the thirty year asset management plan which would go to the executive around autumn. A five year investment programme setting out what the council hoped to achieve post 2012 would also be produced in the autumn.
- 6.5 Members asked how much the council spent on stock condition surveys. The investment manager responded that the council invested £80 million per year in its

housing stock. The last survey, completed in-house, had cost £30 thousand and the current one, using an external consultancy, would cost £800 thousand.

- 6.6 The committee noted the remaining answers to the questions it had raised at its last meeting.

7. FINAL SCRUTINY REPORT: FOOD STRATEGY RECOMMENDATIONS (SCRUTINY SUB-COMMITTEE B)

- 7.1 Councillor Richard Thomas, chair of scrutiny sub-committee B, introduced the report. He stressed the importance of the council and the primary care trust working together on producing a food strategy.
- 7.2 Members asked whether the scrutiny had considered the issue of takeaways and fast food outlets situated close to schools, in terms of their impact on the diet of school-children. Councillor Thomas explained that the scrutiny had received evidence on planning aspects which suggested that requirements such as not having an outlet within 500 yards of a school were difficult to enforce, especially if outlets were already in existence.
- 7.3 Members asked whether the scrutiny had considered any work within schools to improve diet. Councillor Thomas drew the committee's attention to the recommendation relating to school curriculum. Members highlighted that there was no recommendation encouraging breakfast clubs and queried the strength of the recommendation on free school meals. Councillor Thomas reported that the sub-committee had insufficient information to be in the position of recommending free school meals.

RESOLVED:

That the scrutiny report be submitted to the executive for consideration.

(Councillor Toby Eckersley requested that his vote against this decision be recorded in the Minutes.)

8. FINAL SCRUTINY REPORT: SOUTHWARK CIRCLE - A BRIEF UPDATE (HEALTH & ADULT CARE SCRUTINY SUB-COMMITTEE)

- 8.1 Councillor Lorraine Zuleta, chair of the health & adult care scrutiny sub-committee, introduced the report. She confirmed that Southwark Circle was monitoring the demographics of members and helpers, including ethnicity and income.
- 8.2 Councillor Zuleta reported that the sub-committee had asked Southwark Circle to start extending the project beyond Camberwell. Camberwell ward members on the committee indicated that they had not received any information about the project and were concerned as to the lack of information circulated in the local press and to tenants and residents associations, community councils, area housing forums and other council networks. Some members reported that a letter had been sent out to all residents over sixty and that advertising had been placed in buses and at

bus-stops. Councillor Zuleta indicated that she had invited Southwark Circle to speak at Borough & Bankside Community Council and it was suggested that an additional recommendation be added to the report to encourage Southwark Circle to attend all community council meetings.

- 8.3 Members asked whether there was any evidence to demonstrate the savings being made as a result of Southwark Circle's work. There was concern as to whether or not the executive member continued to monitor the success of the project and whether data was being collected to establish how many high and medium dependence people were involved as activists, helpers and users. Members were of the view that it was important to continue monitoring the achievements of the project.

RESOLVED:

That, subject to the following amendments, the report be submitted to the executive for consideration:

- recommendation 2 to propose that the steering group include members of the council, including the executive member
- recommendation 3 to propose Southwark Circle attend all community councils and suggest the use of existing community networks

9. FINAL SCRUTINY REPORT: CONSULTATION REPORT (HEALTH AND ADULT CARE SCRUTINY SUB-COMMITTEE)

- 9.1 Councillor Lorraine Zuleta, chair of the health & adult care scrutiny sub-committee, introduced the report. She explained that the recommendations should be put jointly to the executive and primary care trust. It was agreed that the report be accompanied by a letter stressing the seriousness of the issues involved.

RESOLVED:

That the report be submitted to the executive and primary care trust for consideration.

10. FINAL SCRUTINY REPORT: EARLY YEARS (CHILDREN'S SERVICES AND EDUCATION SCRUTINY SUB-COMMITTEE)

- 10.1 Councillor Barrie Hargrove, chair of the children's services and education scrutiny sub-committee, introduced the report.

RESOLVED:

That the report be submitted to the executive and primary care trust for consideration.

11. FINAL SCRUTINY REPORT: PARENTAL ENGAGEMENT (CHILDREN'S SERVICES AND EDUCATION SCRUTINY SUB-COMMITTEE)

- 11.1 Councillor Barrie Hargrove, chair of the children's services and education scrutiny sub-committee, introduced the report. Members suggested that the recommendations be amended to ask the executive to explore and undertake further reserach in the areas identified. It was also suggested that recommendation 1 be amended to include a referance to schools supporting and encouraging parents.

RESOLVED:

That, subject to the above amendments, the report be submitted to the executive for consideration.

The meeting ended at 10.10 pm.

Item No. 5	Classification: Open	Date: 24 May 2010	Meeting Name: Overview & Scrutiny Committee
Report title:		Scrutiny arrangements for 2010/11	
Ward(s) or groups affected:		All	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

Terms of reference

1. To note size, composition and terms of reference of Overview & Scrutiny Committee, as agreed by Annual Council Assembly on 19 May 2010 (circulated separately).

Overview & Scrutiny Article and Procedure Rules

2. To note any changes to Article and Procedure Rules agreed by Annual Council Assembly on 19 May 2010 (circulated separately).

Establishment of scrutiny sub-committees

3. In accordance with Procedure Rules, to appoint five scrutiny sub-committees.

The committee should agree the size, composition and terms of reference of the sub-committees, including establishing a sub-committee with responsibility for crime and disorder within the meaning of Section 19 of the Police and Justice Act 2006.

Political groups are entitled to reserve members on each scrutiny sub-committee; one fewer reserve than the number of seats they have on the sub-committee (subject to a minimum of one).

Size and composition of sub-committees in 2009-10 were:

Scrutiny sub-committee	Lib Dem	Lab	Cons	Green	Total	Chair/ Vice chair
Children's services and education	3	3	1	0	7	Lab / Cons
Health and adult care	3	3	1	0	7	Lib Dem / Lab
Sub-committee A	3	3	1	0	7	Lab / Lib Dem
Sub-committee B	3	3	0	1	7	Lib Dem /Lab
Sub-committee C	3	3	1	0	7	Cons / Lib Dem

Appointment of Chairs and Vice-Chairs

4. To appoint Chairs and Vice-Chairs of the scrutiny sub-committees (any nominations received to be circulated separately).

BACKGROUND INFORMATION

6. This report asks the committee to complete the scrutiny arrangements for 2010/101 by establishing five sub-committees and reconfirming the joint scrutiny arrangements.

KEY ISSUES FOR CONSIDERATION

Proportionality

General Advice

7. Seats on committees and sub-committees must be allocated in accordance with the four principles of proportionality contained in sections 15, 16 and 17 of the Local Government and Housing Act 1989. When making appointments, committees (in appointing sub-committees) have a duty to give effect to the following principles, as far as is reasonably practicable:
 - (i) That not all the seats on a committee or sub-committee are allocated to the same political group;
 - (ii) That the majority group must have the majority of seats on each committee or sub-committee;
 - (iii) Subject to (i) and (ii) above, it must be ensured that the proportion of each political group's seats of the total number of seats on "ordinary committees" reflects as closely as possible their proportion of seats on full council; and
 - (iv) Subject to (i) to (iii) above, the proportion of each political group's seats on each committee and sub-committee reflects as closely as possible their proportion of seats on full council.

Note: This rule applies to all committees, sub-committees and joint committees, except for licensing committee, standards committee and community councils.

Scrutiny sub-committees

8. Sub-committees are not "ordinary" committees and are each considered individually for the purposes of proportionality. So far as it is reasonably practicable to do so, the allocation of seats on each sub-committee should bear the same proportion to the number of the seats held by that group on the council.
9. The most proportionate allocation will depend on the number of members of the sub-committee. The table below shows the most proportionate arrangement for individual sub-committees:

Committee size	Lib Dem	Labour	Cons
11	4	6	1
9	4	5	0
7	3	4	0
5	2	3	0
3	1	2	0

10. Members can agree an allocation that is disproportionate, provided no Member votes against this. In previous years, the committee has varied the size and numbers on each sub-committee to provide for greater cross-party representation.
11. The constitution specifies that the appointment and composition of scrutiny sub-committees be considered by the first meeting of overview and scrutiny committee.

Appointments to seats

12. Section 16(1) of the Local Government and Housing Act 1989 provides that it is the duty of the authority or committee to exercise their power to make appointments to a body as to give effect “to such wishes about who is to be appointed to the seats on that body which are allocated to a particular political group as are expressed by that group”.
13. There is no requirement that a seat allocated to a particular group can only be filled by a member of that group. Therefore groups have the discretion to allocate seats as they wish, including to a member of another group.

Background papers	Held at	Contact
Agenda - Annual Council Assembly, 19 May 2010]	160 Tooley Street London SE1 2TZ	Ian Millichap Constitutional Team Manager Tel: 020 7525 7236

Audit Trail

Lead Officer	Shelley Burke, Head of Overview & Scrutiny	
Contributors	Peter Roberts, Scrutiny Project Manager	
Version	Final	
Dated	May 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments Included
Strategic Director of Communities, Law & Governance	Yes	Included in the report
Executive Member	N/A	

SCRUTINY WORK UNDERTAKEN 2009/2010

Scrutiny Committee / Sub-Committee	Review Undertaken	Status, May 2010	Next Steps
Overview and Scrutiny Committee	Call-in: Heygate Replacement Housing Sites	Call-in completed	None needed
	Potters Field - Agreement of Heads of Terms	Review completed	None needed
	Elephant and Castle Development Agreement	Ongoing	Call-in meeting requested progress reports before any decision is taken by the executive in respect of the regeneration agreement
	Business Reports	Ongoing	Monitoring
	Three town halls and residual estate	Ongoing	Monitoring
	Primary School Places in Dulwich and East Dulwich	Review completed	Requested report back to Children's Scrutiny, September 2010, on impact of changes to admissions team.
	Call-in: Preferred Options for Elmington Estate	Call-in completed	None needed
	Capital Programme Refresh	Completed	None needed
	Downtown Review	Not pursued	None needed
	Councillor Call for Action: Changing Facilities, Peckham Rye	Not accepted	None needed
Executive Member Interviews	Ongoing	Leader; Resources; Regeneration; Housing (re regeneration role)	
Children's Services and Education Sub-Committee	Safer Schools Partnership Review	Accepted by OSC	To be discussed by Executive
	Early Years Review	Accepted by OSC	To be discussed by Executive 22 June 2010
	Parental Engagement Review	Accepted by OSC	To be discussed by Executive 22 June 2010

Scrutiny Committee / Sub-Committee	Review Undertaken	Status, May 2010	Next Steps
Health and Adult Care Sub-Committee	Consultation - York Clinic	Response submitted	None needed
	Consultation - Reconfiguration of Drug and Alcohol Treatment (Marina House)	Response submitted	None needed
	PCT/ Council Budgets Review	Sub-committee concluded: no report	N/A
	Effectiveness of Foundation Trusts Review	Sub-committee concluded: no report	
	Consultation Review	Accepted by OSC	Responses to report requested from local NHS trusts
	Southwark Circle Review	Accepted by OSC	Further updates requested to OSC or Health on 6 month basis
Sub-Committee A (crime and disorder lead)	Enterprise and Employment Strategy Review	Accepted by OSC	None needed
	Housing Repairs Review	Draft report	N/A
Sub-Committee B	Bus Services Review	Accepted by OSC	Recommendations sent to TfL
	Food Strategy Review	Accepted by OSC	Recommendations to go to joint PCT meeting, and/or Strategic Alliance meeting
	De-cluttering Programme Review	Report agreed by Sub-Committee	Report to be considered by OSC
Sub-Committee C	Census Review	Accepted by OSC	None needed
	Budget and Policy Framework Review	Accepted by OSC	None needed
	20 MPH Zones Review	Draft report	N/A
	Planning Enforcement Review	Report agreed by Sub-Committee	Report to be considered by OSC

DE-CLUTTERING OUR PUBLIC REALM

Report of Scrutiny Sub-Committee B

May 2010



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1 Background and scope of the review

1.1 The purpose of our review was:

- To consider the council's approach to de-cluttering the public realm of the borough
- To make a series of recommendations that can be practically implemented to reduce the street clutter in the borough

2. Street clutter and its causes

2.1 Street clutter can include obstructive clutter, such as bollards, and visual clutter, such as a proliferation of street signs in one place.

2.2 The main reasons for the existence of street furniture, which can become clutter are:

- Physical barriers to stop movement
- Regulations and codes of practice (requirements for certain signs to be in place)
- Schemes for specific users which affect the public realm e.g. cycle schemes; road signs; parking zone information
- Items installed by third parties, such as post boxes and utility hubs
- Temporary items relating to repair or installation works

2.3 Clutter in the public realm is an issue in Southwark, as in many other boroughs in the UK, both due to issues of safety for the community, and aesthetics of the places where people live. Street clutter is highly and constantly visible. The existence of unnecessary street clutter can be obstructive or visual.

2.4 Changes to the appearance and dynamics of the streetscape can be initiated or inherited, for example:

- As a part of a commercial development
- As a result of new enforcement requirements
- As a response to safety concerns
- As a result of fragmented design
- As a result of traffic management schemes
- As an attempt to improve access
- As a result of utilities requirements

2.5 Issues around the streetscape and public realm are usually considered as a part of a project rather than a programme or project in their own right. In other instances, street clutter is a result of a project, which may not have focused on impact on the streetscape at all, or as a very low priority.

2.6 Against this background a scrutiny exercise has been undertaken to focus on de-cluttering in its own right, looking at the council's own policy and practices in this area, to understand better what happens now and improvements for the future.

- 2.7 The scrutiny process was informed by an overview of council projects and programmes implemented.
- 2.8 Due to time restraints, it was not possible to consider evidence from a wide variety of interested people, nor from external organisations whose work has a direct impact on the design and appearance of the streetscape.
- 2.9 The focus has been on the council's own work and procedures on de-cluttering and how work on de-cluttering can facilitate the highest possible quality of design and maintenance of the public realm in the future.
- 2.10 The sub-committee would like to thank Mick Lucas, the council's public realm asset manager for his input which has helped to inform the review.

3. Public realm policy and design

- 3.1 In deliberations the contributors to the review considered the need for a balance in public realm policy between high quality, innovative and interesting design and planning, and the need for realistic maintenance costs.
- 3.2 The council does not currently follow an overall policy in relation to street clutter. Individual elements of street furniture and signage are introduced as a result of a range of disparate projects, and this can lead to an incremental increase in clutter.
- 3.3 The council is currently in the process of finalising a revised streetscape design guide. This guide will be accompanied by a design review process and appropriate training.
- 3.4 The review discussed the scope of the design guide and concluded that de-cluttering is an issue affecting the whole of the public realm not just the streetscapes. For that reason, the design guide should inform policy and practice on housing estates, parks and privately owned space that is accessible to the public (for example developments like More London).
- 3.5 For effective management of street clutter to take place, an holistic approach to the appearance of any space is necessary. With such a large number of organisations involved in the planning, management, and maintenance of the public realm this is difficult to achieve. The merits of the use of a design guide in these circumstances are considerable.
- 3.6 There was concern that a previous design guide had been developed in 2006 but not adopted. A new version of the guide is now being developed. This is timetabled to be completed in June 2010 for approval by the executive/ executive member in September 2010.
- 3.7 From a local authority perspective, a greater opportunity to pro-actively manage street clutter can be obtained, through the use of a collaborative approach. In order to improve the practical arrangements to make this happen, the review makes the following recommendations:

Recommendations:

1. The design guide for the public realm should be finalised and agreed as a cross-cutting guide for the council as a matter of urgency. The sub-committee recommends that it be added to the forward plan for approval in September 2010.
2. The design guide should be used for the wider public realm, not only for specific streetscape issues. In particular, it should be adopted for housing land and reflected in planning policies so that new developments seek to minimise clutter.
3. There should be a substantial and ongoing training programme to train council staff and consultants in the use of the design guide to ensure that the good practice it advocates is embedded across the organisation.
4. The design guide should be championed at the highest level by both members and officers so that it is clear the importance that the council attaches to the issue.
5. Ward councillors should be empowered to become decision makers on highways schemes, perhaps through community councils so that those with an intimate knowledge of an area take political responsibility for decisions on such schemes.
6. To ensure informed decision making, training on streetscape design issues should be extended to councillors.
7. To aid in the profile and focus given to street clutter issues, and to reflect the cross-cutting nature of its use, the design guide should be agreed by the council executive, rather than delegated to an individual member through the individual decision making process.

4. An integrated approach to implementation

- 4.1 The review heard evidence that although design standards often require the installation of signs and other furniture, there is some flexibility in the legislative framework. An integrated approach to design of the public realm, looking at the legislative framework for example of parking enforcement at the same time as the minimum standards for a 20mph zone, can minimise the overall level of street clutter.
- 4.2 The review considered various examples of good and bad practice and discussed how schemes could achieve better final results. It was agreed that many improvement and de-cluttering schemes would benefit from an holistic approach. This would ensure that where possible, all elements of the streetscape are designed and improved at the same time to avoid the piecemeal results that are sometimes evident in the borough. The introduction of peer review of the overall design would assist this.
- 4.3 The review also discussed that local expertise should be used where available, and in particular Living Streets (an organisation which lobbies on road safety issues for pedestrians) which has a specific expertise which could assist good practice.

- 4.4 A similar integrated approach could assist in the effectiveness of de-cluttering projects and activities. For example, if bollards are put into place to prevent pavement parking, when they are removed it would be sensible to coordinate with parking enforcement to ensure that their removal does not create problems.
- 4.5 The review discussed the complex issues around the removal of street furniture, and the need to balance safety for residents with the aesthetics of the streetscape. In addition many factors change over time, such as the balance of priority given to the car vs. pedestrian and the perceived need for safety in certain places, in particular around school premises.
- 4.6 There was discussion on the level of commitment to reducing street clutter across the council. Whilst those in the relevant part of the highways team were up to speed on the issues, many of those responsible for installing new schemes did not show evidence of an understanding of the need to reduce clutter. Anecdotal examples of new highways schemes in particular, pointed to a continued problem with the installation of street clutter.

Recommendations:

- 8. Public realm officers should be involved and consulted at the design and planning stage of all projects to facilitate cross-referencing with other projects and ensure that the principles of minimum street clutter set out in the design guide are adhered to.
- 9. Living Streets should be consulted on public realm issues wherever practicable.
- 10. The peer review process for design improvements should be formally embedded in the design and approval process to ensure an holistic approach.
- 11. Early consultation should include the issue of maintenance costs. This will reduce unforeseen liabilities for the Council in terms of the cost of maintenance of the public realm.

5. Engagement on de-cluttering issues

- 5.1 The engagement of councillors as advocates of de-cluttering in the context of developments and schemes across the borough was also discussed. Whilst schemes get presented and discussed at community councils, the information available to enable councillors to take an overview of public realm as a whole was considered limited. The review discussed the issues around this, in particular the fact that de-cluttering is often a part of many projects and not the single focus of attention, and that the availability of information e.g. interrogatable databases, does not always enable the easy digestion of better information.
- 5.2 The result of this is that de-cluttering is often not addressed as an important issue, until the results of failure to address it effectively become apparent, and complaints are made. Giving clear responsibility to focus on de-cluttering to an individual elected member may provide a solution to this.

- 5.3 The review highlighted the limited funding available for de-cluttering schemes per se. Additional funding is unlikely to be available in the near future and this makes it especially important to make best use of the funding that is available.
- 5.4 One scheme that is available for 2010-11 is funding through the Local Implementation Process (LIP), for pedestrian guard rail assessment and removal, including safety audits of the area. The engagement of councillors and members of the public in the selection of these schemes was considered as one practical way to deliver a profile raising de-cluttering activity.

Recommendations:

12. That the executive consider whether it is appropriate to appoint a “de-cluttering tsar” to provide a focus for this work within the authority.
13. That the selection process for the forthcoming guard rail removal scheme should engage councillors and members of the public who are likely to have views about priority areas.
14. The community councils should take a more central role in reviewing and approving highways and road safety schemes.

6. Conclusion and summary of recommendations

- 6.1 De-cluttering of the public realm in Southwark is an issue which is impacted on by a wide variety of issues, priorities, regulations and departments within the council.
- 6.2 The review saw pictorial evidence of good and bad practice in relation to street clutter, clutter removal and design collaboration across the borough.
- 6.3 The recommendations in this report are designed to assist the council to implement good practice in relation to de-cluttering.
- 6.4 The adoption of good practice in relation to de-cluttering could make significant improvements to the quality of the public realm in Southwark without having a dramatic impact on resources. In fact, in most cases, adoption of the good practice recommendations in this report would save resources.

Summary of recommendations:

1. The design guide for the public realm should be finalised and agreed as a cross-cutting guide for the council as a matter of urgency. The sub-committee recommends that it be added to the forward plan for approval in September 2010.
2. The design guide should be used for the wider public realm, not only for specific streetscape issues. In particular, it should be adopted for housing land and reflected in planning policies so that new developments seek to minimise clutter.

3. There should be a substantial and ongoing training programme to train council staff and consultants in the use of the design guide to ensure that the good practice it advocates is embedded across the organisation.
4. The design guide should be championed at the highest level by both members and officers so that it is clear the importance that the council attaches to the issue.
5. Ward councillors should be empowered to become decision makers on highways schemes, perhaps through community councils so that those with an intimate knowledge of an area take political responsibility for decisions on such schemes.
6. To ensure informed decision making, training on streetscape design issues should be extended to councillors.
7. To aid in the profile and focus given to street clutter issues, and to reflect the cross-cutting nature of its use, the design guide should be agreed by the council executive, rather than delegated to an individual member through the individual decision making process.
8. Public realm officers should be involved and consulted at the design and planning stage of all projects to facilitate cross-referencing with other projects and ensure that the principles of minimum street clutter set out in the design guide are adhered to.
9. Living Streets should be consulted on public realm issues wherever practicable.
10. The peer review process for design improvements should be formally embedded in the design and approval process to ensure an holistic approach.
11. Early consultation should include the issue of maintenance costs. This will reduce unforeseen liabilities for the Council in terms of the cost of maintenance of the public realm.
12. That the executive consider whether it is appropriate to appoint a “de-cluttering tsar” to provide a focus for this work within the authority.
13. That the selection process for the forthcoming guard rail removal scheme should engage councillors and members of the public who are likely to have views about priority areas.
14. The community councils should take a more central role in reviewing and approving highways and road safety schemes.

Scrutiny Sub-Committee B

Councillor Richard Thomas (Chair)
 Councillor Tayo Situ (Vice-chair)
 Councillor Columba Blango
 Councillor Mark Glover
 Councillor David Hubber
 Councillor Jenny Jones
 Councillor Andrew Pakes

PLANNING ENFORCEMENT

Report of Scrutiny Sub-Committee C

May 2010



Chair's foreword and context of the review

Planning has always been a complex and contentious issue across the United Kingdom. Southwark is no exception to this.

Planning enforcement is an important element of the overall planning regime. The delivery of an effective, consistent and efficient enforcement service can have a great positive impact on the lives and livelihoods of the people of Southwark.

The visibility of planning issues evoke strong feeling and this makes them a favourite topic of discussion and debate in every community, especially where there is a perception that things have not been dealt with effectively.

This scrutiny review has been deliberately narrowly focused and objective. We have not sought to form opinions or recommendations on the planning policies of the council, nor to assess the outcomes of individual enforcement cases.

Instead we focused our attention on the way the enforcement process works in Southwark, in particular:

- How the enforcement service works in collaboration with other regulatory and service delivery functions within the council
- The understanding and approach to pre-emptive tools such as temporary stop notices and injunctions
- Decision making and the scheme of delegation in operation
- Communication between the council and the community on enforcement issues

The time available to undertake the review has been limited due to the election period, so our review has been largely reliant upon evidence from members and officers of the council. The sub-committee is grateful for the expert, positive and timely input it has received, in particular from the Head of Development Management, Planning Enforcement Manager and Health Safety and Licensing Manager

We have also benefitted from input and evidence from a local resident with a long experience of planning enforcement issues. We hope that those taking forward the recommendations from this review will make use of the resources available in the community as the enforcement service moves forward.

The recommendations made in this report offer an opportunity to clarify and enhance an important service for the community and businesses in the borough.

Councillor Toby Eckersley
Chair, Scrutiny Sub-Committee C
March 2010

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1. What is planning enforcement?

- 1.1 The Planning Acts give the council a wide range of powers to deal with a breach of planning control. The implementation of these powers is known as planning enforcement.
- 1.2 A breach of planning control occurs when an organisation or individual:
 - carries out development that needs planning permission without first obtaining it, or
 - breaches the conditions attached to planning permission.
- 1.3 Effective planning enforcement has a significant role to play in protecting the quality of the local environment and quality of life for communities.

2. Introduction and scope of the review

- 2.1 The scrutiny review of planning enforcement was originally suggested by Councillor Gordon Nardell. Its scope has been informed by two papers which Councillor Nardell produced in January 2009 and January 2010, based on experience of enforcement issues arising in and around Peckham.
- 2.2 The scoping discussion was also informed by a comprehensive report from the planning enforcement team in the council, outlining current working practice including a large number of recent service improvements such as considerably improved resource stability, and arrangements for consistent delivery of the service.
- 2.3 The report also contained recent performance statistics for the service to enable the sub-committee to see the current volume and complexity of issues that are being managed by the team.
- 2.4 The sub-committee also invited views at the scoping stage from Eileen Conn, an active local resident who had expressed a particular interest in the review.
- 2.5 The scoping discussion highlighted a potential need for greater clarity, communication and consistency between cases in the implementation and decision making associated with planning enforcement.
- 2.6 In this context it was agreed that the review should focus upon the council's own processes, procedures and decision-making around planning enforcement.

2.7 With this in mind detailed evidence was requested on the following issues:

- How the enforcement service works in collaboration with other regulatory and service delivery functions within the borough
- The understanding of and approach to use of pre-emptive tools such as temporary stop notices and injunctions
- Decision making and the scheme of delegation in operation

3. Planning enforcement and other council functions

Joined-up working between council departments

3.1 It came to the attention of the sub-committee during the scoping exercise that, historically, the effectiveness of the relationship between the planning enforcement functions within the council and other departments had been poor. In some cases, so poor that other departments have been in breach of planning control in the work they have done.

3.2 Evidence on specific cases from a number of departments was received by the sub-committee that confirmed this to be the case. The sub-committee noted the importance of improved joined-up working and systems between council departments to ensuring successful planning enforcement, and was pleased to learn that there are a number of working protocols now in place.

3.3 The sub-committee noted from the evidence it considered that where town centre managers are, or have been, in post, this clearly has a beneficial impact upon facilitating joined up working on a very localised basis.

3.3 During discussions it became evident that many of the issues derive from lack of staff awareness of enforcement issues and the seriousness of infringement, which could ultimately lead to legal action.

3.4 It was discovered that any general lack of awareness is further exacerbated by the complexity of planning issues. In particular, incremental changes of use of a building over time, or changes to the fabric of the building, can accumulate into a planning breach. Each individual change may be very small but the cumulative alteration is substantial. This type of evolution of premises is an area of concern which needs a particular training focus. It would not be captured in generic "planning awareness" training.

3.5 The sub-committee's recommendations on joined up working, focus on actions which will help to avoid the need for enforcement action within the council are set out below:

Recommendations:

1. The implementation of increased and systematic internal communication (including access to computerised record systems) and training between planning enforcement and other regulatory functions of the council, and with housing and highways functions.
2. Particular focused training should be introduced in the “evolution of premises” issue.
3. A common system should be developed for all enforcement teams across the council to pass information in a timely way to planning enforcement officers when they become aware of a possible breach of planning control.

Joined up working with partners and partnerships

- 3.6 The activities of many partners and partnership bodies impinge upon planning and planning enforcement activities in the borough. There is a clear need for planning enforcement staff to have an understanding of how the service relates to other organisations, and supports the priorities for the borough, by working closely with others.
- 3.7 It may be possible for example, to work more closely with the police on designing out crime and disorder, and reducing the risk of amenity issues by working closely with the safer neighbourhood teams.

Multiple regulatory processes and priorities

- 3.8 It became clear during the review how easily regulatory systems which operate in isolation from one another can find themselves giving judgements and rules which may appear contradictory to land and building users in the borough. For example, the permission granted for hours during which premises can operate for commercial purposes may be different from the licensing hours.
- 3.9 The council is responsible for a number of regulatory functions, each of which has its own legal framework and governance arrangements. No one regime has supremacy over the other and the decisions of one are not binding on another.
- 3.10 The sub-committee deliberated the impact on the “consumers” of the system of the various regulatory processes.
- 3.11 The council’s own policy sets out a framework for cross-consultation so that there is consistency for the customer from both processes, with an expectation that where rules differ between the two approvals, for example on opening hours, the more stringent rules would apply.

- 3.12 This evidence demonstrates clearly how easily confusion can arise, particularly from the perspective of customers of the systems, or members of the public observing the outcomes of these complex decision-making processes (many of whom have an active interest in supporting the council in the effective implementation of its planning enforcement responsibilities). There are issues around public expectations from the various systems, and how users of the system understand and negotiate their use.
- 3.13 The sub-committee noted the example of the Guide for Faith Communities produced on the planning requirements around faith premises, and agreed that this kind of guidance is good practice which could be replicated for other groups which are users or, which do not know they need to use the planning process.
- 3.14 The review recommends the following practical steps that could be taken to minimise confusion leading to non-compliance in the future:

Recommendations:

4. The development of clear guidance for businesses and individuals on planning enforcement issues, especially around licensing. This advice should be developed with full engagement of those members of the public who are already actively involved in planning enforcement issues.
5. In future, when differential and potentially contradictory compliance requirements are made by planning enforcement and other regulatory regimes, a clear “joint” explanation be offered to minimise misunderstanding.

4. Pre-Commencement vigilance

- 4.1 The sub-committee received a variety of evidence demonstrating that even for developments with appropriate planning and regulatory arrangements in place there is still a need for planning enforcement. There is a need to ensure that the development proceeds in line with the plans approved.
- 4.2 Effective vigilance requires close working between building control and planning enforcement teams, even after the relevant planning approvals are in place.

Recommendation

6. Development of systematic closer working arrangements between the planning enforcement and building control functions of the council.

5. The council's use of enforcement tools and pre-emptive powers

- 5.1 The council has a number of tools at its disposal to deal with planning enforcement issues, ranging from low key negotiation to taking court injunction action to stop activity.
- 5.2 The sub-committee confirmed through the evidence it received that whilst there are legal frameworks and guidance around the use of each power, there is a substantial level of subjective judgement necessary on a case by case basis to decide which, if any, of these tools should be used. In planning enforcement terminology this is often referred to as the "expedient" use of planning action, from the language of s. 172 of the Town and Country Planning Act 1990, which relates to enforcement notices. The main two categories of enforcement tools are those which follow a period of investigation and which, once deployed, come into effect after a waiting period (enforcement notices and breach of condition notices); and those that are pre-emptive and can stop a breach of planning control in its tracks – stop notices (which can be served in conjunction with an enforcement notice), temporary stop notices and injunctions (which can be used as soon as a breach is detected).
- 5.3 In many cases, taking formal enforcement action is costly and time-consuming for all concerned, and the use of good judgement by planning and legal professionals can minimise the need to resort to confrontational legal measures. Where appropriate, and particularly where a breach of planning control is causing harm, officers recognise the need to use the powers at their disposal.
- 5.4 The sub-committee was keen to take a view on the balance of judgements for and against using various enforcement tools.
- 5.5 In particular we explored the use of temporary stop notices, which were introduced by the Planning and Compulsory Purchase Act 2004. Temporary stop notices can be used when a local planning authority considers that there has been a breach of planning control so that activity can be stopped immediately, for up to 28 days, whilst the authority decides whether to take formal enforcement action by enforcement notice or breach of condition notice. Temporary stop notices are most effective when they are utilised very quickly once a breach of planning has been identified, not least because that prevents a change of use from becoming established and minimises the scope for arguments about compensation liability (see below).

- 5.6 In order to form an opinion on our council's use of enforcement methods, a benchmarking exercise was undertaken comparing the pattern of activity in Southwark with that in neighbouring boroughs and comparable urban areas elsewhere in the UK. We confirmed that our team's activities are broadly consistent with practice elsewhere.
- 5.7 The objective benchmarking exercise did not reveal on what basis any one planning tool is deemed to be appropriate.
- 5.8 In addition to the benchmarking it was necessary to address the issue of "expediency". Planning enforcement officers explained the current process leading to a judgement on the action to be taken, as follows:
- A possible breach is identified
 - A planning enforcement officer makes a site visit to collect relevant information
 - Enforcement manager assesses the evidence against the policy planning framework, the nature and impact of the infringement and any precedents in the area
 - A recommendation for action is passed to legal services
 - Legal services advise on expedient action
 - If no action is thought expedient a retrospective planning application is invited
- 5.9 There were concerns amongst members of the sub-committee that a lack of clarity of legal opinion on the liability the council may face if it issues temporary stop notices may be affecting their use as a pre-emptive enforcement tool. Independent legal counsel was sought on this issue, and it was confirmed that the use of temporary stop notices does not put the council at risk of compensation liability as long as there is a breach of planning control evident. It is important to note that liability does not arise in circumstances where planning permission for the development the subject of the notice, is granted after the notice has been served.
- 5.10 It was also revealed in the evidence sessions that the resources and systems to capture the necessary information to make a temporary stop notice a viable option are not always available.
- 5.11 Limited resources necessitate prioritisation within the planning enforcement function. The sub-committee endorses the current classification which gives priority one (highest) status to investigating complaints relating to works causing serious harm, defined as follows:
- Works that are irreversible or irreplaceable, or constitute a serious breach of planning control;
 - Unauthorised works to a listed building;
 - Breaches of article 4 directions
 - Significant development within or on metropolitan open land

- Unauthorised development causing serious harm to the character and appearance of a conservation area
- Unauthorised development (building operations and change of use) that seriously affect the vitality and viability of shopping parades

5.12 To make best use of available resources, and make dispute resolution as efficient as possible, the sub-committee feel that where breaches of planning control fall into the top priority for the council, the use of temporary stop notices is the least costly measure, both in terms of impact on the business/individual activity concerned, and in terms of enforcement resources.

Recommendations:

7. Where a priority one breach of planning control is identified, there will be a presumption in favour of the use of a temporary stop notice by the legal and planning enforcement officers.
8. Systems should be put in place to facilitate decision making for priority one breaches which are fast enough to make the use of temporary stop notices by the council a viable option.

6. Schemes of delegation

- 6.1 The sub-committee considered the scheme of delegation on planning enforcement currently in operation, and whether this is appropriate for the efficient operation of the enforcement service.
- 6.2 The current arrangement is a simple approach with the delegation of all planning enforcement matters to the head of development management.
- 6.3 Benchmarking evidence was considered on the delegation schemes in some other local authorities.
- 6.4 The benchmarking exercise demonstrated that overall there is a trend towards maximising delegation, but with some variation of approach, and referral to elected members where there is uncertainty over:
 - Whether something falls within existing agreed policies and plans (departure from the development plan)
 - If there is a judgement to be made about expediency
 - If a decision is likely to be controversial
 - If an elected member “calls in” an enforcement action/lack of action
- 6.5 The sub-committee discussed the merits of the various approaches vis a vis the simple 100% delegation approach.

- 6.6 Overall, because of the technical and legal nature of decisions to be taken, and the need for rapid action, the current scheme of delegation was considered to be appropriate for operational issues in the majority of cases. However, while the 100% delegation approach has the advantage of simplicity, there are sound democratic arguments for there to be at least some scope for decision-making by members.
- 6.7 It was agreed that on enforcement matters which are not straightforward it would be useful for the head of development management to be able to refer matters upwards as appropriate. We did not feel it appropriate to be prescriptive about the categories of case that might be referred for member decision. We felt the simplest approach would be to amend the Constitution to give the Head of Development Management a broad discretion to relinquish a decision to members. However, we anticipated that in practice, the sort of cases likely to be considered appropriate for member decision would be in particular:
- where officers propose not to take enforcement action on a controversial issue
 - on matters of strategic importance
 - on matters which, though minor individually, have a considerable cumulative effect
 - where a decision could set a precedent establishing or varying priorities for enforcement action
- 6.8 We recognised that these would invariably be “after the event” cases in which the issue is whether or not to issue an enforcement notice or possibly a breach of condition notice; or to take self-help steps to give effect to an enforcement notice (eg. demolishing a building where the developer has failed to comply with a requirement to do so). Members would not have a role in taking decisions about pre-emptive measures such as temporary stop notices, because there the speed of decision making is crucial. There was consideration of the role of different bodies in the council’s decision making structure, including community councils which currently have a role to play in the context of planning applications. In the case of enforcement, the sub-committee feel that the most appropriate place of referral for planning enforcement decisions would be the Planning Committee. This would avoid inconsistency of approach, and would reflect the fact that decisions relinquished to members are likely to include cases that are either of strategic importance or locally controversial. However, we emphasise that community councils should nevertheless receive regular reports about enforcement in their area: see below.
- 6.9 The sub-committee’s provisional view is that this change could be achieved by a simple amendment to Part 3F of the Constitution by adding a new matter to the ten already reserved for decision by the Planning Committee along the following lines:

“In cases referred to them by the appropriate chief officer, head of service or head of business unit, to consider and determine the taking of enforcement steps.”

Recommendations:

9. The Planning Committee should receive an annual report on planning enforcement containing both quantitative and qualitative information, to allow it to set policy priorities effectively.
10. The scheme of delegation in the Council’s Constitution should be amended to facilitate the referral (at the discretion of the Head of Development Management) of planning enforcement decisions to the Planning Committee.

7. Issues not covered in the review

- 7.1 During our scoping discussion the sub-committee agreed the parameters for the review.
- 7.2 We agreed that it would be inappropriate to focus on issues which impinge upon planning policy, as discussions of this type would require the collection of a much more extensive evidence base, and could only be done as it should be with the engagement of a broad range of organisations, individuals and expertise. The time available for this review was insufficient to undertake this scale of work.
- 7.3 Similarly, it was agreed that it was not possible to undertake a wide review inviting general evidence from local residents and customers of the planning service. The level of interest and potential for involvement of interested members of the community was acknowledged by the sub-committee.
- 7.4 It was agreed that, although this review could not involve more people, enhanced and broader communication on planning enforcement issues, by extending the availability of quarterly monitoring reports to all eight community councils in the borough, would be recommended for immediate implementation. It was noted that at least two community councils have already adopted this practice, and members of the council and the public have found this very helpful.
- 7.5 The need for better communication with individuals who report possible breaches of planning was also discussed. Improved transparency around processes is desirable, and it was agreed that in future, the acknowledgement of receipt of a complaint relating to a possible breach should include a copy of the enforcement protocol so that complainants could better understand the enforcement process.

Recommendations:

11. Each community council should receive regular (at least quarterly reports) on planning enforcement issues, building upon the pilots already underway. These should normally be presented by an officer who could answer questions.
12. Individuals or organisations that report a possible breach of planning should receive a copy of the enforcement protocol to improve communication and transparency around processes.

8. Conclusion and summary of recommendations

- 8.1 The recommendations made in this review advocate small scale changes to the planning enforcement processes and procedures of the council.
- 8.2 If made, though small in scale, they would have a substantial impact on the effective delivery of the service, by:
 - setting a clear framework for joined-up working with other regulatory regimes;
 - improving clarity of roles;
 - establishing clear priorities for use of resources; and
 - providing better information and guidance for users of the planning service

Summary of recommendations:

1. The implementation of increased and systematic internal communication and training between planning enforcement and other regulatory functions of the council, including access to computerised record systems.
2. Particular focused training should be introduced in the “evolution of premises” issue.
3. A common system should be developed for all enforcement teams across the council to pass information in a timely way to planning enforcement officers when they become aware of a possible breach of planning control.

4. The development of clear guidance for businesses and individuals on planning enforcement issues, especially around licensing. This advice should be developed with full engagement of those members of the public who are already actively involved in planning enforcement issues.
5. In future, when differential and potentially contradictory compliance requirements are made by planning enforcement and other regulatory regimes, a clear “joint” explanation be offered to minimise misunderstanding.
6. Development of systematic closer working arrangements between the planning enforcement and building control functions of the council.
7. Where a priority one breach of planning control is identified, there will be a presumption in favour of the use of a temporary stop notice by the legal and planning enforcement officers.
8. Systems should be put in place to facilitate decision making for priority one breaches which are fast enough to make the use of temporary stop notices by the council a viable option.
9. The Planning Committee should receive an annual report on planning enforcement containing both quantitative and qualitative information, to allow it to set policy priorities effectively.
10. The scheme of delegation in the Council’s Constitution should be amended to facilitate the referral (at the discretion of the Head of Development Management) of planning enforcement decisions to the Planning Committee.
11. Each community council should receive regular (at least quarterly reports) on planning enforcement issues, building upon the pilots already underway. These should normally be presented by an officer who could answer questions.
12. Individuals or organisations that report a possible breach of planning should receive a copy of the enforcement protocol to improve communication and transparency around processes.

Scrutiny Sub-Committee C membership

Councillor Toby Eckersley (Chair)

Councillor Anood Al-Samerai (Vice-Chair)

Councillor Richard Livingstone

Councillor Jane Salmon

Councillor Robert Smeath

(Councillor Gordon Nardell also participated in this review as a reserve member for Councillor Livingstone at the second meeting on this project and instigator of the review)

Only Councillors Toby Eckersley, Richard Livingstone and Gordon Nardell participated in this scrutiny review.

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