

Public Document Pack

Mid Devon District Council

Scrutiny Committee

Monday, 17 July 2023 at 5.30 pm
Phoenix Chambers, Phoenix House, Tiverton

Next ordinary meeting
Monday, 14 August 2023 at 5.30 pm

Please Note: This meeting will take place at Phoenix House and members of the Public and Press are able to attend via Teams. If you are intending to attend in person please contact the committee clerk in advance, in order that numbers of people can be appropriately managed in physical meeting rooms.

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Membership

Cllr N Woollatt
Cllr R Gilmour
Cllr R Roberts
Cllr G Westcott
Cllr D Broom
Cllr A Cuddy
Cllr G Czapiewski
Cllr M Farrell
Cllr B Holdman
Cllr L G J Kennedy
Cllr S Robinson
Cllr Mrs F J Colthorpe

AGENDA

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

1 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of substitute Members (if any).

2 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**
To record any interests on agenda matters.

3 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.

4 **MINUTES OF THE PREVIOUS MEETING** (*Pages 5 - 10*)
To consider whether to approve the minutes as a correct record of the meeting held on Monday 19 June 2023.

5 **DECISIONS OF THE CABINET**
To consider any decisions made by the Cabinet at its last meeting that have been called-in.

6 **CHAIRMAN'S ANNOUNCEMENTS**
To receive any announcements that the Chairman of Scrutiny Committee may wish to make.

7 **MOTION 564 - INCLUSIVITY AND COMMUNITY ENGAGEMENT**
Committee to discuss the question: Does Local Government work for women? Committee to be mindful of the fact that work needs to be continued. Some recommendations had been approved by the Scrutiny committee and Full Council but they still needed to be finalised.

Discussion to be supported by the Corporate Manager for People, Governance and Waste, the District Solicitor and Monitoring Officer, and the Members Services Officer.

8 **PLANNING ENFORCEMENT REPORT** (*Pages 11 - 42*)
To receive a report from the Director of Place at the request of the Scrutiny committee further to the meeting of the committee in June 2023.

9 **WORK PROGRAMME** (*Pages 43 - 46*)
To discuss the current work plan for the Scrutiny Committee and

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Committee Administrator: David Parker
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This document is available on the Council's Website at: www.middevon.gov.uk

consider new suggestions for the Work Plan.

Stephen Walford
Chief Executive
Friday, 7 July 2023

Meeting Information

From 7 May 2021, the law requires all councils to hold formal meetings in person. The Council will enable all people to continue to participate in meetings via Teams.

If you want to ask a question or speak, email your full name to Committee@middevon.gov.uk by no later than 4pm on the day before the meeting. This will ensure that your name is on the list to speak and will help us ensure that you are not missed. Notification in this way will ensure the meeting runs as smoothly as possible.

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Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 19 June 2023 at 5.15 pm

Present

Councillors

R Gilmour (Chairman)
D Broom, Mrs F J Colthorpe, A Cuddy,
G Czapiewski, M Farrell, B Holdman,
L G J Kennedy, R Roberts, S Robinson,
G Westcott and N Woollatt

Apologies

Councillor(s)

Also Present

Councillor(s)

D Wulff

Also Present

Officer(s):

Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leburne (District Solicitor and Monitoring Officer), Andrew Seaman (Member Services Manager) and David Parker (Member Services & Policy Research Officer)

1 ELECTION OF VICE CHAIRMAN (03:17)

Cllr G Westcott was duly elected Vice Chairman of Scrutiny Committee for the municipal year 2023-2024

(Proposed by Cllr B Holdman, seconded by Cllr S Robinson)

2 START TIME OF MEETINGS (05:06)

It was agreed that the committee meet at 5:30pm for the remainder of the municipal year.

(Proposed by Cllr B Holdman, seconded by Cllr L G J Kennedy).

3 APOLOGIES AND SUBSTITUTE MEMBERS (06:20)

No apologies were received. Cllr L Taylor, Cllr J Buczkowski, Cllr S Clist, Cllr G Duchesne, Cllr A Glover, Cllr L Knight and Cllr J Wright attended the meeting virtually.

Cllr Mrs F J Colthorpe confirmed that she was the permanent member of the Scrutiny Committee in place of Cllr S J Penny.

4 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (06:45)

Members were reminded of the need to make declarations where appropriate.

5 PUBLIC QUESTION TIME (07:04)

Barry Warren's questions related to Item 9 on the agenda; on the subject of Review Recommendations of the Planning Enforcement Working Group. It was asked:

1. Would this committee please take that whole document, now rather than later, and see where we were now as it was submitted in September 2021?
2. Were members aware of a paper I prepared on the 16th of April 2023 whilst Leader of the Council and submitted to the then Chair of Scrutiny to address the failings?
3. Would the committee please note that Recommendation 8, to rewrite the Local Enforcement Plan has not been actioned to date and so Council are working from a plan that is over 5 years old?
4. Would the committee please note that Recommendation 6 was to form a sub group of the Planning Committee to oversee Planning Enforcement. That was not implemented thereby denying elected members the opportunity to oversee planning enforcement in an open and transparent manner? Officers decided that the Cabinet Member for Continuous Improvement could deal with this. No such Cabinet post exists under the current administration. Would you please look at putting a process in place which will give the public some confidence in our Planning Enforcement activities which are considered by those most affected to be ineffective and toothless?
5. Would the committee note that staffing levels were recommended and some work was carried out to move toward that? Since this new administration has been in place the staff numbers dedicated to Planning Enforcement has reduced back to levels pre the 2021 report. Why?
6. If looking at this currently would the committee consider any working group co-opting a member or members of the public who have experience of the problems and concerns to assist members?

In reply the Chairman said that these were historic issues, a new administration is just getting going and was work in progress. The Scrutiny Committee would be looking at vacancies and the moratorium on recruitment.

Paul Elstone asked in relation to Item 9 – The Scrutiny Workplan 2023-2024 and the 3 Rivers Independent Authority review:

1. It is clear from the Work Programme that your own 3 Rivers investigation is dependent on receiving the results of other investigations. The urgent, but wide-ranging, Cabinet investigation into 3 Rivers was supposed to have reported by now. What is the date when it is expected that this full and historic investigation into 3 Rivers, including the Council's handling of the commercial relationship and related reporting, will be completed?
2. Council Officers have only just announced a 3 Rivers bad debt of over £5.2 million. In view of this, would Scrutiny Committee consider widening the scope of your Scrutiny investigation, in the Work Programme, so that it is not limited to the processing of the Business Plan?
3. Allegations have been raised relating to serious ethical and business conduct failings, including involving Council Officers and Members, in the whole matter of 3 Rivers. In the light of this, why was it felt permissible to allow Council Executive Officers to "scope out" the terms of reference of any review, when their own actions, or the lack of, may very likely form a key part of any investigation?
4. For full openness and transparency, which this new administration strives for, will all the Investigation Reports be published and made fully available to the public?

In reply the Chairman stated that this was an historic issue. The Deputy Chief Executive Officer (S151), confirmed that the Allegation report is going to be discussed by the Audit Committee on Tuesday 27 June, and that report from Devon Audit Partnership was now in the public domain. The Francis Clark report looking into how the business goes forward would be available in two and a half to three months' time. The bad debt and the impairment on the loans is something that the S151 Officer, has to make publicly available as part of the end of year accounts as at 31st March. It is the likely level of loan repayment and is an estimate and not a write off. The terms of Reference for the Francis Clark investigation was put in front of Cabinet in March and was signed off by them so it was a Councillor Terms of Reference and not an Officer Terms of Reference.

The Chairman commented that both reports are to come to the Scrutiny Committee as well as the Audit Committee. The Chairman put on record that the committee intends to be transparent and be as fully accountable as possible. Where this is possible within the remits of the law, we would do that, they would be looking very closely at matters on a case by case basis, there would be no blanket assumption that something is automatically dealt with under part two unless there were very specific legal reasons for it being so

6 MINUTES OF THE PREVIOUS MEETING (18:11)

The minutes of the meeting held on Monday 17 April 2023 were NOTED. The minutes were amended to show that Cllr B Warren had attended the meeting on 17th April via Zoom.

7 DECISIONS OF THE CABINET (18:44)

No decisions of the Cabinet were called in.

8 CHAIRMAN'S ANNOUNCEMENTS (18:53)

The Nolan Principles would apply on all occasions and we would not want to revisit some of the unpleasantness of the old administration.

9 WORK PROGRAMME (19:12)

- a) Motion 583 - Protecting Rivers and Seas work, making sure that Planning Development on large developments work with South West Water (SWW) on planning infrastructure was working effectively relating to sewage and so on is appropriate, continues.

It was agreed that the Committee receive clarity on what this motion was meant to do. There were two areas that the motion seeks to deal with; a) inviting further information from SWW to state the current loads on their infrastructure and how this would be affected by new development so that that may have significance for planning decisions, b) SWW had been invited and had attended to give a presentation to the Scrutiny Committee about their future investment plans. . The Committee requested the background journey of the motion that led to the SWW presentation, the Clerk will look for the information. The Committee would like to talk with the Environment Agency. Have SWW provided the information they were asked to provide? Is there a Data Controller? Do they have a plan – is it effective? The Clerk will review all of the requests and look at the previous minutes. This will all be put into a document to be discussed at a future meeting.

- b) Review recommendations of the Planning Enforcement Working Group.

In response to the public questions, it was agreed that background of the working group along with their final report and officer updates should be provided in a new report to the July meeting of the Scrutiny Committee.

- c) Motion 564 – Inclusivity and Community Engagement – does Local Government work for women? Work needs to be continued. Some recommendations had been approved by the Scrutiny Committee and Full Council but they still need to be finalised.

It was discussed that it would assist the committee by having an updated report on this matter for the July committee. It was agreed to review whether there is a crossover with the Community PDG. It was also agreed to move from the Increases to members allowance here to look at how to encourage greater diversity at local elections.

- d) 3 Rivers – It was discussed that the review needs to look at the whole 3 Rivers history as well as looking forward at 3 Rivers future. It was agreed that this will come back to Scrutiny once the two external reports are received.

- e) Increases to members allowances. – It was confirmed that there had been an Independent Review Panel (IRP) and the matter had gone to full Council. This was not a matter for the Scrutiny Committee. The Deputy Chief Executive (S.151) was asked whether increases to member's allowance was included within the budget? He replied that the matter of member's allowances is taken from the IRP. The Deputy Chief Executive (S.151) said that this council had a history of following the recommendations of the IRP. With regard to the overarching budget, reports would go to the PDG's in November. Cabinet receives a report just before then which gives an overview of the Council's medium term plan, where we are predicting to be next year and the three years thereafter. In December we receive information from Central Government as to the likely level of funding. The Cabinet will start receiving formal reports in late January. The IRP report will come in before or after that process, but if it arrives later, then the Deputy Chief Executive (S.151) will have made an allowance towards it. The monitoring Officer confirmed that there was due to be a fundamental review of member's allowances in any event.
- f) Participatory budgeting review, it was discussed that a lot of work has been done and needs to be carried forward. It was agreed that the committee should find examples of Participatory Budgeting and look at other councils for examples both good and bad.

Other matters for the work plan:

1. Making Green requirements part of future planning applications – The Chairman commented that the Environment PDG would be a good place for this work to start. At the same time the Chairman will ask the Environment PDG to consider what Energy Efficient Standards need to go into go into new build properties.
2. Can this committee and the Council support the installation of sprinkler systems into all new build residential properties. The Fire Service can provide displays. The Chairman asked for a demonstration of these systems to be arranged.
3. The Clerk was asked to put any outstanding proposals into a document that could be considered on an actual agenda.

(The meeting ended at 6.09 pm)

CHAIRMAN

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Report for: Scrutiny Committee

Date of Meeting:	17 th July 2023
Subject:	Planning enforcement within Mid Devon
Cabinet Member:	Cllr Steven Keable, Cabinet Member for Planning and Economic Regeneration
Responsible Officer:	Richard Marsh, Director of Place
Exempt:	N/A
Wards Affected:	Relevant to all wards.
Enclosures:	[any appendices – list here]

Section 1 – Summary and Recommendation(s)

This summary report has been prepared at the request of the Scrutiny committee further to the meeting of the committee in June 2023.

The report seeks to:

1. Set out some background in relation to planning enforcement including the obligations on the district council in terms of planning enforcement.
2. Set out the recommendations made by the previous member-led working group upon completion of the working group and the changes in planning enforcement that came about as a result of that work, and;
3. Set out the current position in relation to planning enforcement within Mid Devon, and the 'next steps' in terms of progressing the work of the service.

Recommendation(s):

1. That Members familiarise themselves with, and note, the work that was previously undertaken under the oversight of the member working group and the recommendations set out by the working group.
2. That Members note the changes that were made to planning enforcement as a result of the work of the planning enforcement working group, and;

3. That Members note the requirements around planning enforcement, the resource available to the council in addressing planning enforcement matters and the way in which the council is now dealing with enforcement matters.

Section 2 – Report

1.0 Introduction – background to planning enforcement

- 1.1 Planning enforcement is an important part of planning activity and the planning system. Enforcement is necessary in order to ensure that amenity is protected and risks mitigated, but planning enforcement is governed by legislation, is discretionary and must be proportionate – it is not therefore a mechanism which affords the LPA ‘carte blanche’ in terms of how it goes about controlling development activity within its boundaries. In fact, planning necessarily relies upon the majority of landowners/developers complying with regulations and restrictions and self-policing. In the majority of cases, landowners do comply with conditions, restrictions and regulations and enforcement activity is therefore typically focused on the minority of cases where owners/developers fail to abide regulations or conditions and where the ‘risk’ of non-compliance is deemed to be high. ‘high’ risk can come in different forms and can include environmental risks, ecological risks and risks to amenity/residents/neighbours.
- 1.2 As planning enforcement is a discretionary service which is not chargeable, all authorities must necessarily take a ‘view’ in terms of how they resource their planning departments to accommodate enforcement activity. The approach varies significantly between councils with some councils having no-dedicated enforcement staff and other authorities, such as Mid Devon, having skilled staff dedicated to enforcement activity. Mid Devon has 2 full time officers which, relative to the size of the authority, is considered to be considerable although it should also be noted that the district does generate significant levels of enforcement activity.
- 1.3 In cases where a breach of planning has occurred, it is likely that the Local Authority will first consider whether the breach could be regularised via an application for the works. Where officers consider that this is possible, officers will typically first invite an application to regularise planning breaches before considering any other enforcement activity.
- 1.4 In cases where breaches continue, are not resolved or are considered too severe to regularise through an application, the Council is able to

deploy its powers in order to seek compliance. The steps that the council can take vary between cases, but may involve the serving of notices and other proactive work to ensure that breaches are remedied.

1.5 The approach adopted by the Council (Mid Devon) is necessarily to prioritise high-risk and high impact breaches, understanding that the council is not equipped (financially or in terms of staff) to address every alleged breach.

1.6 As a point of reference, in recent months the council has served 25 notices such as Enforcement, Breach of Conditions, and Planning Contravention Notices. Total notices showing on the system is 37, so 67.57% of notices have been served recently. It must also be noted that planning law requires officers to look at 'regularising' the alleged breach rather than serve notices.

2.0 The member-led working group

2.1 The member-led working group was formed under the previous Council administration and began work in early 2021.

2.2 Recommendations were put forwards by the working group in a report dated September 2021. The recommendations of the working group are set out below.

2.3 Officers continued to report against progress against the recommendations during 2022.

2.4 A current/up to date position is set out below in terms of progress against the original recommendations:

Recommendation	Current position
<p>1. That the Council recruit further resource for planning enforcement so the team includes either: a Principal Planning Enforcement Officer, two Planning Enforcement Officers and trained dedicated admin support; or a Principal Planning Enforcement Officer and three Planning Enforcement Officers.</p>	<p>Partially completed. For an extended period of time (~15 months), additional officer resource was put in to the planning enforcement team in order to address historic cases and a backlog of work. This was a successful short term measure, but was never intended to be a permanent change. The team has now reverted to 2 FTE staff, as per the agreed establishment, and the current case load is considered manageable.</p>

	The focus for officers will necessarily continue to be 'high risk' planning breaches, as set out above.
2. That the Council establish a dedicated Solicitor with planning experience to act as a direct point of reference for the Planning Department, this could potentially be a shared service with another Local Authority	Completed – The Council/LPA has benefited from planning lawyer resource since the recommendations were set out. Presently, a locum planning solicitor is providing planning capacity and expertise, pending the appointment of a permanent planning solicitor. This recruitment is underway, but is proving challenging in the current marketplace.
3. That the Planning Department establish a process to enable proactive monitoring of planning conditions. That a proposal for how this will be achieved is brought to the Scrutiny Committee by the Chief Executive within a month of adoption of recommendation by Council.	Partially completed and linked to recommendation 8 – It is not realistic to expect to monitor all planning conditions on all schemes and a high degree of compliance is reasonably expected by landowners/developers. A reduction in the number of conditions attached to planning permissions assists with monitoring and positive steps have been made in this regard by planning officers/the committee. Further progress is now linked to the implementation of a new enforcement plan which, if approved, should ensure the better utilisation of officer time so that capacity can be used to monitor compliance on conditions on known problem/high risk sites. Comms regarding proactive enforcement should reinforce the expectation of compliance within our communities.
4. That Enforcement Officers are provided with tablets with mobile telephone connection, linked to MDDC systems, to assist on site visits so that information can be retrieved on site and allow immediate contact and consultation with management if required.	Completed – appropriate equipment now with officers.
5. That internal procedures be put in place so that discretionary powers be delegated down to appropriate levels to allow enforcement officers to make relevant decisions on site	Completed – officers are appropriately empowered in consultation with managers with regular case reviews occurring. Further delegation may increase the risk of legal challenge(s) and are not considered appropriate.

<p>6. That a Subgroup of the Planning Committee be established to monitor issues within Planning Enforcement. This standing Enforcement Advisory or Working Group would review performance, deadlines and outstanding cases, and report back to the Planning Committee.</p>	<p>Completed – this recommendation was discharged through the ‘Continuous Improvement’ cabinet portfolio which included oversight of key/high risk cases within planning enforcement.</p>
<p>7. That the free planning advice line and/or the contact telephone number be reinstated with immediate effect (as outlined by the Customer Service Working Group).</p>	<p>N/A – Planning no longer operate a free planning advice line (although informal advice will still be offered by officers upon request.) This was agreed as part of the revised planning fee schedule approved in 2022.</p>
<p>8. That the Local Enforcement Plan be rewritten to consider the views and recommendations of this report and to take into account more enhanced versions from other Local Authorities, notably the East Devon model. That the new Enforcement Plan be submitted to the Scrutiny Committee for consideration prior to submission for adoption by Planning Committee.</p>	<p>Partially complete – a draft Local Enforcement Plan has been produced which is based upon the East Devon plan. It is understood that this will require Cabinet approval and this approval will be sought in Autumn 2023 (to be added to the Forward Plan).</p>
<p>9. That a Tree Officer is recruited as a matter of urgency, this could potentially be a shared service with another Local Authority.</p>	<p>Complete – tree officer started with MDDC in September 2021.</p>
<p>10. That the Chief Executive bring forward a proposal for making information on enforcement action more publicly available.</p>	<p>Complete – owing to sensitivities around enforcement activity, only limited data can be made publically available. Such information is available on the public website. As set out above, further public awareness of enforcement activity will be driven through more proactive communications work, where appropriate.</p>
<p>11. That the Development Management Manager establish a process for case management to ensure cases are monitored and followed up, so that cases are not lost within or between Departments.</p>	<p>Complete – regular meetings occur between officers and managers to review and progress cases.</p>
<p>12. That an implementation plan is drawn up to cost the</p>	<p>Complete – recommendations have been implemented where appropriate</p>

recommendations made in this report, and passed to Cabinet for consideration.	and possible with other tasks still in hand and progressing.
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3.0 Current situation

- 3.1 As can be seen from the above, the recommendations have been substantially completed and progress is being made on the remaining recommendations.
- 3.2 It should also be noted, as set out above, that the LPA has, through considerable effort and expense, made considerable improvements with regard to its enforcement activity since the original working group was formed. During this time, c517 cases have been closed whilst 438 have been received, the cases outstanding as at 05/07/2023 are 235 and 25 notices served, (see 1.6) – please note more notices are being prepared, the picture is fluid. Management information is evolving to help monitor the position.
- 3.3 Looking at the highest point of cases outstanding ‘340’ v outstanding as at 05/07/2023, the total is c31% lower.
- 3.4 The caseload is split by priority this happen in every ‘LPA’ the analysis as at 05/07/2023 shows that c87% are deemed to be low leaving 13% in Medium and High, 9.78% are High.
- 3.5 Questions have been raised by a member of the public in relation to two issues in particular and the scrutiny committee is in receipt of these. These questions related to:
- 3.5.1 The update to the Local Enforcement Plan (recommendation 8) – as set out above; a draft version of the revised enforcement plan has now been produced and is under review by officers. This plan has been based upon the East Devon plan originally cited by members as a good example to draw from. It is expected that this will be presented to Cabinet for approval in Autumn 2023.
- 3.5.2 The formation of a sub-group of the planning committee to ‘monitor issues’ within planning (recommendation 6) – since the working group met and set its recommendations, significant officer time has been invested in addressing historic enforcement cases and in improving processes. Regular case review meetings now take place between the enforcement officers and Development Management Manager with a monthly

meeting also taking place with the Corporate Manager and Director of Place to review progress and agree next steps and actions. In the past 2 years, the work was also been overseen by the Cabinet Member for Continuous Improvement with regular updates provided. Now that the Cabinet post for Continuous Improvement has ceased to exist, officers will provide updates to the Cabinet member for Planning and Economic Regeneration. This will ensure that member oversight can continue and give additional rigour and confidence in the processes and actions that officers are progressing.

4.0 Next steps

- 4.1 As set out above, officers will progress work on the Local Enforcement Plan and continue to manage enforcement cases on a priority basis, ensuring that the Cabinet member for Planning and Economic Regeneration is briefed regarding key cases, progress and challenges.

Financial Implications

It is vital that the enforcement work is actioned in accordance with law, precedent and advice from the inspector. The LPA must consider the risk of appeal and the impact on the public purse.

Legal Implications

Matters of enforcement are bound by strict data protection rules, these must be adhered to at all times.

Risk Assessment

No risks identified the report is for information only

Impact on Climate Change

N/a in regards to this report

Equalities Impact Assessment

N/a in regards to this update report

Relationship to Corporate Plan

Due to the nature of the work this area touches, Homes, Environment, and Economy & Community

Section 3 – Statutory Officer sign-off/mandatory checks

N/a

Statutory Officer:

N/a

Date:

Cabinet member notified: (yes)

Section 4 - Contact Details and Background Papers

Contact: Richard Marsh and or Dean Emery

Email: rmarsh@middevon.gov.uk or demery@middevon.gov.uk

Telephone: Richard Marsh 01884 – 4950 Dean Emery 01884 - 4945

Background papers:

- Planning Enforcement Recommendations
- Planning Enforcement Scoping Document
- Planning Enforcement Final Report

SCRUTINY COMMITTEE

Need to Review Recommendations of Working Group

1. Information.

1.1 The Scrutiny Committee set up a working group to look into Planning Enforcement activity, or rather lack of it, within Mid Devon District Council

1.2 A report was prepared:

***Planning Enforcement in Mid Devon District Council
September 2021***

A review by a Working Group of the Mid Devon District Council Scrutiny Committee

1.3 The report was presented to, and accepted by, Scrutiny Committee on the 13th September 2021 and contained 12 recommendations. Updates as to progress on the implementation of those recommendations have been reported to Scrutiny Committee from time to time since that date.

1.4 This paper deals with the progress, or more correctly the lack of, implementation of two of those recommendations – Numbers 6 and 8.

2. Recommendation 6.

2.1 *6. That a Subgroup of the Planning Committee be established to monitor issues within Planning Enforcement. This standing Enforcement Advisory or Working Group would review performance, deadlines and outstanding cases, and report back to the Planning Committee.*

2.2 This recommendation has never been implemented and from a verbal report to Scrutiny at an update meeting it appears that Officers decided against implementing this recommendation. The brief reason given was that there was no need as enforcement matters were being dealt with by the Cabinet Member for Continuous Improvement.

2.3 Some successes have been reported and there has certainly been more activity in the issuing of various notices. There is little evidence of some major breaches being resolved, some of which prompted the formation of the working Group in 2020 and it held its first meeting in March 2021. Performance reports are brought to the attention of the Planning Committee but these are only ‘raw figures’ with no detail.

2.4 There are a number of high interest breaches which still appear to continue and whereas members, when enquiring, are advised of ‘negotiations’ and ‘dialogue’ the breaches continue to the concern of members and interested members of the public.

2.5 It is suggested that Scrutiny Committee again visit this recommendation with a view to it being implemented and at least members will be more aware and hopefully have some input.

3. Recommendation 8.

3.1 *8. That the Local Enforcement Plan be rewritten to consider the views and recommendations of this report and to take into account more enhanced versions from other Local Authorities, notably the East Devon model. That the new Enforcement Plan be submitted to the Scrutiny Committee for consideration prior to submission for adoption by Planning Committee.*

3.2 If one looks on the MDDC Website one will find:

Enforcement Policy Statement November 2005
Local Enforcement Plan April 2018

3.3 There is no up to date document in compliance with recommendation 8 although there have been approaches to some members to assist with it.

4. Suggested Outcome.

4.1 That an item be placed on the Scrutiny Committee work program for a report to be prepared as to the current position with these two recommendations. Scrutiny Committee can then review the position and make further recommendations.

5. Report Author.

5.1 The paper author is Councillor Barry G J Warren who was Chairman of the Working Group and currently Leader of the Council.

Scoping Document for Scrutiny Working Groups

<u>Review Title</u>	Planning Enforcement Working Group
<u>Working Group Members</u>	Cllr G Barnell; Cllr W Burke; Cllr L Cruwys; Cllr R Stanley; Cllr B Warren.
<u>Working Group Chairman</u>	
<u>Officer Support</u>	Eileen Paterson, DM Group Manager Jenny Clifford, Head of Planning and Regeneration Carole Oliphant, Member Services Clare Robathan, Scrutiny Officer
<u>Rationale:</u> Why is the review important? For example: <ul style="list-style-type: none"> • Identified by Members as a key issue for the public? • Poor performing service? • Service considered important by the community? • Public interest covered in local media? 	<p>Members are concerned about a lack of enforcement action by the MDDC Planning Department. This is particularly in respect of breaches of planning control and failure to comply with planning conditions. Members have been contacted by residents on numerous occasions with regards to planning enforcement issues in their Wards.</p> <p>There is concern that the planning enforcement service is under resourced and is, sometimes, risk averse to taking formal enforcement action.</p> <p>Failure to investigate and enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system.</p>
<u>Review aims, objectives</u> What does the review hope to achieve? Identify what will be included and what is achievable. For example: <ul style="list-style-type: none"> • Identify what is being done and what the potential barriers are • Explore existing initiatives and determine if they are appropriately joined up • Review performance indicators • Compare our policies with those of a neighbouring authority • Assess the environmental /social impacts 	<p>The Working Group aims to review the operation and utilisation of planning conditions and enforcement powers, and to identify issues to inform service improvement. This will include an understanding and review of:</p> <ul style="list-style-type: none"> • Enforcement team workloads - what is causing the high level of workloads and how are these are managed/prioritised. • The performance metrics and targets required to assess service delivery. • What are positive outcomes for planning enforcement and how these might be achieved. • Planning conditions - how they are set, how they are followed up and how to ensure compliance. • Legal services role and how they might best support effective enforcement. • Promotion of the system so that people are

	<p>deterred from breaching planning controls.</p> <ul style="list-style-type: none"> • The role of Parish and Town Councils in supporting planning enforcement. • The role of Planning Committee in encouraging and supporting positive enforcement action • The use of the MDDC Local Enforcement Plan in ensuring effective delivery of enforcement services. <p>The review will also consider any other issues identified during course of work.</p> <p>The review will aim to ensure:</p> <ul style="list-style-type: none"> • Demonstrable improvements in planning enforcement response times and outcomes; • Clear deadlines for compliance and enforcement action; • Outcome and output based performance indicators (<u>not</u> process indicators); and • Improved public perceptions of the service.
<p><u>Desired Outcomes</u></p>	<p>Appropriately resourced and effective planning enforcement in the District. Officers will be efficient at dealing with breaches of planning control and the public will have confidence in the planning system.</p>
<p><u>Methodology / Approach</u></p> <p>What type of enquiry will be used to gather evidence? For example:</p> <ul style="list-style-type: none"> • Desk based review of papers • Site visits / observations • Comparisons with other authorities • Process mapping • Public meetings • Interviewing officers • Calling witnesses/experts to give evidence 	<ul style="list-style-type: none"> • To ensure understanding of the context in which planning enforcement takes place. • Review of cases – the Group will review a handful of cases covering a range of issues, including: planning conditions; certificates of lawful use; TPOs. In order to see the journey from start to finish these will largely be historic cases, although some live cases may be reviewed if they are not in Members wards. A summary of cases will be presented at the first meeting for discussion with officers. • An all Member email will be sent to ascertain if Members have examples of (preferably completed) planning enforcement issues where there is concern that it has not been dealt with effectively, or, additionally examples of where it has been resolved in a timely manner. • Discussions with officers including: <ul style="list-style-type: none"> ○ Enforcement officers, including a review of workloads and resourcing and an understanding how many alleged breaches are taken forward; ○ Legal services – to understand barriers to prosecution and legal services role in the process;

	<ul style="list-style-type: none"> ○ Line manager(s) ○ Elected members ○ Parish Councillors <ul style="list-style-type: none"> ● Review of statute, and internal process and procedures including compliance and enforcement deadlines. ● Consideration of the policy on delegated decision making on planning enforcement, and understanding of which cases cannot be resolved by delegated decision. ● Review of best practice to understand if there are any lessons to be learnt from others. ● Benchmarking of information available on planning enforcement. ● Consideration of how to feed into the review of the Local Enforcement Plan.
<p><u>Witness / Experts</u></p> <p>An important part of the scoping process includes deciding what people should be asked for interview.</p> <ul style="list-style-type: none"> ● Executive Members and officers are required by the Constitution to attend to explain decisions. ● Other people may be invited to discuss issues of local concern and / or answer questions but are not required to attend. It may be more beneficial to visit people for an informal chat. 	<p>Members will hold discussions with a number of officers, as above.</p>
<p><u>Timescales</u></p> <p>What will be done and by when. For example:</p> <ul style="list-style-type: none"> ● Start date ● Meeting frequency ● Draft report deadline ● Projected completion date 	<p>Start Date:- January 2021 Meeting Frequency:- Every three weeks Draft Report by:- End May 2021 Completion:- Report to Scrutiny July 2021</p> <p>Ideally meetings will be held at 10am on a Thursday.</p>
<p><u>Target Body for Findings / Recommendations</u></p>	<p>Scrutiny Committee and then Cabinet.</p>

Proposed Work Plan

First meeting mid-January

Review of cases – the Group will review a handful of cases covering a range of issues, including: planning conditions; certificates of lawful use; TPOs. In order to see the journey from start to finish these will largely be historic cases, although some live cases may be reviewed if they are not in Members wards.

A summary of cases will be presented at the first meeting for discussion with officers. (Cllr Warren will liaise with Eileen Paterson and Clare Robathan to agree selection criteria and numbers required).

Second meeting

Discussion with enforcement officers to include: a review of workloads and resourcing; an understanding how many alleged breaches are taken forward (compared to how many are reported); an understanding of internal processes and procedures; an understanding of what recommendations would help officers in doing their job better.

Third meeting

Discussion with legal services, to include: a review of the number of cases taken to prosecution; legal services role; to understand barriers to prosecution.

Other meetings

- Discussions with other officers, Members and Parish Councillors as needed;
- Review of best practice to understand if there are any lessons to be learnt from others.
- Review of resources;
- Consideration of the policy on delegated decision making on planning enforcement, and understanding of which cases cannot be resolved by delegated decision.
- Consideration of how to feed into the review of the Local Enforcement Plan.

Planning Enforcement in Mid Devon District Council

September 2021

A review by a Working Group of the Mid Devon District Council
Scrutiny Committee

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Introduction

Planning enforcement investigates possible breaches of planning control and aims to resolve these. Effective enforcement is important to maintain public confidence in the planning system. Mid Devon District Council (MDDC), as the Local Planning Authority, has responsibility for taking whatever enforcement action may be necessary, in the public interest. Formal enforcement action may take a variety of forms with a wide range of legal tools available.

Members of the Scrutiny Committee had expressed concern about the timeliness of some enforcement action, particularly in respect of breaches of planning control and failure to comply with planning conditions. This report looks at the operation and utilisation of enforcement powers and planning conditions, and aims to identify issues to inform service improvement.

Rationale

Members had concerns, and had been contacted by residents on occasions, with regards to planning enforcement issues in their Wards. Residents reported delays and concerns around progress on enforcement issues. This had led to concern that the planning enforcement service is under resourced and may be, occasionally, risk averse to taking formal enforcement action.

Unauthorised development can be detrimental to the local environment and a source of community tension. Failure to investigate and enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system.

This review aims to ensure:

- Improvements in planning enforcement response times and outcomes;
- Clear deadlines for compliance and enforcement action; and
- Improved public and Elected Members perceptions of the service and confidence in it.

Methodology and approach

The Chairman of the Working Group was Cllr B Warren, other Members of the group included: Cllr G Barnell; Cllr W Burke; Cllr L Cruwys; and Cllr R Stanley. The first meeting of the Working Group was held on 11 March 2021 and the group agreed to meet at least monthly. The Group held meetings with relevant Officers to understand how planning enforcement currently operates in the Council. Members spoke to a variety of Officers, including:

- The two Planning Enforcement Officers (11 March 2021);
- The Planning Department Administration Staff (15 April 2021);
- The two Area Team Leaders (17 May 2021), and a second meeting with the Area Team Leader responsible for Enforcement (25 June 2021);
- The Development Manager (17 May 2021);
- The Head of Legal and Monitoring Officer (7 June 2021); and
- The Head of Planning and Regeneration (8 July 2021).

Members also had a written submission from the Administration and Performance Manager on the level of administration resource dedicated to Planning Enforcement within the Administration team.

In order to understand how Planning Enforcement works in other Local Authorities, Members of the Group also spoke to the Development Manager at East Devon District Council.

In addition, the Group reviewed a large number of relevant documents including: the Mid Devon Local Enforcement Plan; the National Planning Policy Framework; Mid Devon Local Plan; the Planning Practice Guide; and other Local Authorities Enforcement Plans.

The Group reviewed data provided in relation to all planning enforcement cases since the start of 2019. This data review looked at the issues over that time, including: case load; resolution time; the number of open cases and numbers in each priority category.

In order to fully understand the processes and areas of delay, Members looked at 15 randomly selected Planning Enforcement cases in detail. For each case a Member talked through the file with the relevant Officer to understand why certain decisions had been taken and the timelines involved.

Members are very grateful to the Officers that took time to speak to them and for their honest and informative answers and ideas. Members would also like to thank Sally Gabriel, Member Services Manager and Clare Robathan, Scrutiny Officer for their assistance with this review.

Recommendations

1. That the Council recruit further resource for planning enforcement so the team includes either: a Principal Planning Enforcement Officer, two Planning Enforcement Officers and trained dedicated admin support; or a Principal Planning Enforcement Officer and three Planning Enforcement Officers.
2. That the Council establish a dedicated Solicitor with planning experience to act as a direct point of reference for the Planning Department, this could potentially be a shared service with another Local Authority.
3. That the Planning Department establish a process to enable proactive monitoring of planning conditions. That a proposal for how this will be achieved is brought to the Scrutiny Committee by the Chief Executive within a month of adoption of recommendation by Council.
4. That Enforcement Officers are provided with tablets with mobile telephone connection, linked to MDDC systems, to assist on site visits so that information can be retrieved on site and allow immediate contact and consultation with management if required.

5. That internal procedures be put in place so that discretionary powers be delegated down to appropriate levels to allow enforcement officers to make relevant decisions on site.
6. That a Subgroup of the Planning Committee be established to monitor issues within Planning Enforcement. This standing Enforcement Advisory or Working Group would review performance, deadlines and outstanding cases, and report back to the Planning Committee.
7. That the free planning advice line and/or the contact telephone number be reinstated with immediate effect (as outlined by the Customer Service Working Group).
8. That the Local Enforcement Plan be rewritten to consider the views and recommendations of this report and to take into account more enhanced versions from other Local Authorities, notably the East Devon model. That the new Enforcement Plan be submitted to the Scrutiny Committee for consideration prior to submission for adoption by Planning Committee.
9. That a Tree Officer is recruited as a matter of urgency, this could potentially be a shared service with another Local Authority.
10. That the Chief Executive bring forward a proposal for making information on enforcement action more publicly available.
11. That the Development Management Manager establish a process for case management to ensure cases are monitored and followed up, so that cases are not lost within or between Departments.
12. That an implementation plan is drawn up to cost the recommendations made in this report, and passed to Cabinet for consideration.

Rationale for recommendations

From this review it is clear that Planning Enforcement Officers are experienced, professional and adept at investigating and handling complex enforcement cases. Delegated decision making has enabled decisions to be made away from Committee and this has helped speed up the process. Officers work well together as a team – using each other’s knowledge to help move cases forward and also to ensure safety on site visits where necessary. The team also works well across the Council with other teams and Departments.

Despite this, delays are still occurring and the level of resourcing is a concern. Public and Member expectations are not being met and this is causing reputational damage to the Council.

Recommendation 1

That the Council recruit further resource for planning enforcement so the team includes either: a Principal Planning Enforcement Officer, two Planning Enforcement

Officers and trained dedicated admin support; or a Principal Planning Enforcement Officer and three Planning Enforcement Officers.

The current level of resourcing in the Planning Enforcement Team is not meeting the levels of public and Member expectation with regards to investigation and turn around. In terms of caseload, 66% of cases since 2019 have been resolved within the first 90 days – 90 days is the target for cases as stated in the Mid Devon Local Enforcement Plan. Members recognise that there will be times where formal enforcement action is required, such as the issue of an enforcement notice, and that the timescales involved will not always make this target possible. Members believe, however, that there is on occasion significant delay and a number of cases are taking too long to resolve.

The Enforcement team would benefit from extra resource, particularly given that the Enforcement Officers currently carry out the majority of administration work and this is adding to the delay. Members heard from Officers that in order to ensure the service functioned effectively, a Principal Planning Enforcement Officer plus three Enforcement Officers, or a Principal Planning Enforcement Officer, plus two Enforcement Officers and dedicated administration support, is required.

Recommendation 2

That the Council establish a dedicated Solicitor with planning experience to act as a direct point of reference for the Planning Department, this could potentially be a shared service with another Local Authority.

Members heard from Officers (inside and outside the Council) that Local Authorities like Mid Devon generally have a dedicated planning Solicitor. The relationship between planning and legal plays a vital part in the Council's ability to take meaningful enforcement action. A planning solicitor would provide a dedicated point of contact and enable conversations to take place before any enforcement process commenced. This could help speed up the length of time taken to give notices.

Members were cautioned by the Head of Legal with regards to how difficult it is to recruit a Solicitor with planning experience. The Head of Legal did, however, think that effort should be made to work across Districts to share legal services with other local authorities. The use of a shared service would provide access to specialist lawyers and provide greater capacity and skills, not just in planning.

Recommendation 3

That the Planning Department establish a process to enable proactive monitoring of planning conditions. That a proposal for how this will be achieved is brought to the Scrutiny Committee by the Chief Executive within a month of adoption of recommendation by Council.

Members are aware that sometimes conditions are attached to planning applications that are not subsequently complied with. Enforcement Officers currently rely on information about such conditions being passed to them by Members of the Public or Town/Parish Councils. There is currently no agreed process in the Council for the proactive monitoring of conditions. Whilst Members are mindful that it would be impossible to monitor all conditions, the Group heard from East Devon that their Enforcement Officers had the 'proactive' monitoring of conditions within their role. This

not only helps act as a deterrent, but also helps Officers understand the success of negotiation and application of conditions. Some Authorities have a dedicated Officer to monitor compliance with conditions by carrying out spot checks on sites, particularly where it is known a developer has a record of non-compliance. This is particularly relevant in Mid Devon where we have a number of Anaerobic Digester plants and associated infrastructure where monitoring compliance with conditions is time consuming.

Recommendation 4

That Enforcement Officers are provided with tablets with mobile telephone connection, linked to MDDC systems, to assist on site visits so that information can be retrieved on site and allow immediate contact and consultation with management if required.

Discussions regarding technology showed that Officers would welcome the introduction of iPads or tablets. Such technology, if linked to MDDC systems, connected to the telephone system and with access to emails, could significantly improve efficiency. Officers had used them within previous Authorities and had seen first-hand how they promote effective use of time. East Devon District Council also stressed that since Enforcement Officers had an iPad, efficiency had improved significantly. Their Officers are able to show maps/plans on site, take photos and log things on the system immediately, or call a colleague for advice (and share photos with that colleague on site) to resolve issues immediately.

Whilst Members recognise that there is a cost involved with the introduction of tablets, and that it may be complicated to link to the system, the benefits of such technology could significantly improve MDDC's enforcement service. The costs could be balanced against more productivity and improvements in time management.

When Members met the Head of Planning, Economy and Regeneration, she confirmed that Enforcement Officers are in the process of being provided with tablets and that the mobile telephone connection project was a high priority for the Communications team and was currently underway.

Recommendation 5

That internal procedures be put in place so that discretionary powers be delegated down to appropriate levels to allow enforcement officers to make relevant decisions on site.

Currently a full written report has to be prepared before legal action is taken, which goes to the Development Manager to give the go ahead for the serving of a notice. This can cause delays as in most cases there is also Legal involvement. Members heard from Enforcement Officers that, in order to save time, their professional judgement, on relatively simple cases or on issues regarding temporary stop notices, should be enough to act immediately. The Head of Legal also said that it would be possible to give Enforcement Officers the power to serve temporary stop notices – although they would still require advice from legal.

Whilst Members recognise the importance of record keeping, particularly in relation to legal action, Members believe that a review of decision making powers of Officers on the ground should take place. This could mean, that in clear cut cases, if a breach of

planning control has clearly taken place, the owner/occupier/person responsible will be informed straight away (if they are present).

Recommendation 6

That a Subgroup of the Planning Committee be established to monitor issues within Planning Enforcement. This standing Enforcement Advisory or Working Group would review performance, deadlines and outstanding cases, and report back to the Planning Committee.

In order to ensure continued monitoring of activity and performance within Planning Enforcement, a standing Subgroup of the Planning Committee should be established. This Group would: monitor case load; open and closed cases; review reasons given for closing cases and/or taking action or no further action in individual cases; types of enforcement notices issued; resolution time; trends; performance data and any outstanding cases. It would also consider ways of working in other Local Authorities, and report back to the Planning Committee.

Recommendation 7

That the free planning advice line and/or the contact telephone number be reinstated with immediate effect (as outlined by the Customer Service Working Group).

Members heard from the Planning Enforcement Officers that there had been a significant knock on effect resulting from the ending of the free planning advice, which has been replaced by a paid for advice service. Enforcement Officers spend time directing people to the right resource in the Council, which is taking time away from investigations. The reintroduction of this free service would enable Officers to focus on investigatory work.

The report by the Scrutiny Customer Experience Working Group in July 2020, recommended that the Planning Department consider re-establishing the dedicated phone answering system. That review found that the lack of a dedicated phone line was taking time away from officers who were being interrupted during other work to answer calls. The recommendation has not been actioned.

Recommendation 8

That the Local Enforcement Plan be rewritten to consider the views and recommendations of this report and to take into account more enhanced versions from other Local Authorities, notably the East Devon model. That the new Enforcement Plan be submitted to the Scrutiny Committee for consideration prior to submission for adoption by Planning Committee.

In reviewing the Mid Devon Enforcement Plan, alongside other Local Authorities enforcement plans, Members agreed that it would be useful to include further information when the review of the Enforcement Plan takes place this year. Members particularly admired the East Devon Local Enforcement Plan which includes detail into what action will be taken in different types of cases, and detail on types of enforcement powers available. It also has detail on listed buildings, advertisements and a specific section on trees. By providing this detail in the Mid Devon Local Enforcement Plan, members of the public would better understand the planning enforcement process and in turn may reduce work for the Officers. A section on trees may help members of the

public in understanding what issues require consent or what trees need to be protected.

Recommendation 9

That a Tree Officer is recruited as a matter of urgency, this could potentially be a shared service with another Local Authority.

Members heard how the lack of a Tree Officer was having a knock on effect on the Planning Enforcement Officers as it often fell to them to pick up this work. This not only added to the caseload of the Officers, but also meant that these cases were not being handled by a specialist.

Members are aware that the post of Tree Officer has been re-evaluated and is now at a higher grade and will now be advertised as Arboricultural Officer. Members hope that the regrading will attract suitable candidates allowing the role to be filled.

Recommendation 10

That the Chief Executive bring forward a proposal for making information on enforcement action more publicly available.

Members are aware of the confidentiality issues with putting enforcement information on the Planning Portal. A review of what is made available, how information could be made available and how quickly would be useful so that Members of the public are aware of action being taken. This in turn may help reduce customer enquiries.

Recommendation 11

That the Development Management Manager establish a process for case management to ensure cases are monitored and followed up, so that cases are not lost within or between Departments.

When looking at cases in detail, it became apparent that there are times when cases can sit within a Department for a long period of time or appear to get lost between teams. This appears to happen when a case has been sent by an Enforcement Officer to another team or Department for further action. The enforcement service would benefit from clear case management and a process by which to monitor and follow up cases.

Recommendation 12

That an implementation plan is drawn up to cost the recommendations made in this report, and passed to Cabinet for consideration.

In order to fully understand the financial implications, Members would like Officers to draft an implementation plan so that Cabinet can fully consider the impact of these recommendations.

Planning Enforcement in Mid Devon District Council

The Planning Enforcement Team

The current planning enforcement team at MDDC comprises two full time officers who each cover an area of the District (East and West). Administration support is provided by three planning support officers who provide administration support to the whole Planning Department and have enforcement as one part of their wider role. We heard from these officers that they currently provide about 21 hours per week (in total) for enforcement administration. The team is managed by an Area Team Leader who is also responsible for another planning team within the Department.

Previously within the Council there were two and a half (FTE) enforcement officers. This was reduced to two officers, with the part time officer moving to a different role. To assist with the subsequent backlog, an administration post was established, this role took on the majority of the enforcement administration work which freed up the Enforcement Officers to investigate issues.

This administration post lasted 12 months, but when the officer left the Council it was decided that rather than recruit a new Officer, the three planning support officers would instead support the enforcement officers alongside their other responsibilities.

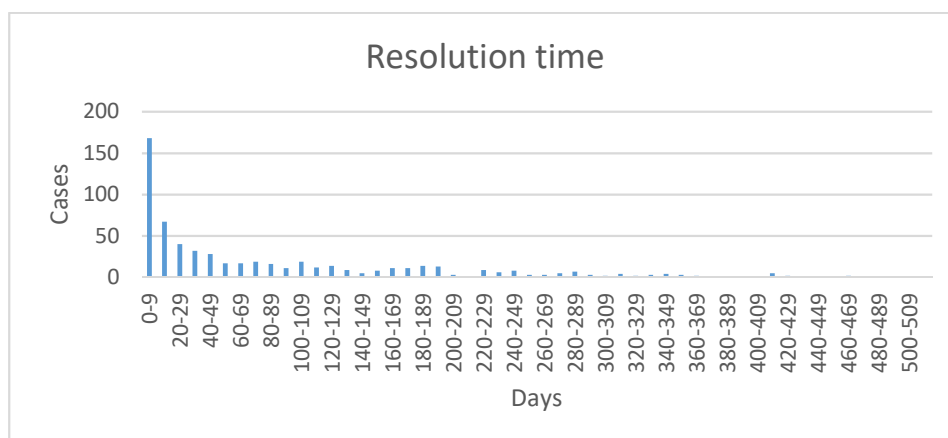
Enforcement caseload

Members reviewed data on cases since the start of 2019 to 22 March 2021, this review showed that:

- 796 cases have been received since 2019, of those:
 - 459 cases were received in 2019.
 - 278 cases were received in 2020 (during the pandemic).
 - 60 cases had been received to that date in 2021.

Of the 796 cases since 2019, 615 had been 'resolved', 181 cases were still open. Of the 615 cases resolved on the spreadsheet, resolution time ranged from 0 days to 515 days.

The chart below shows the range of resolution times per 10 days:

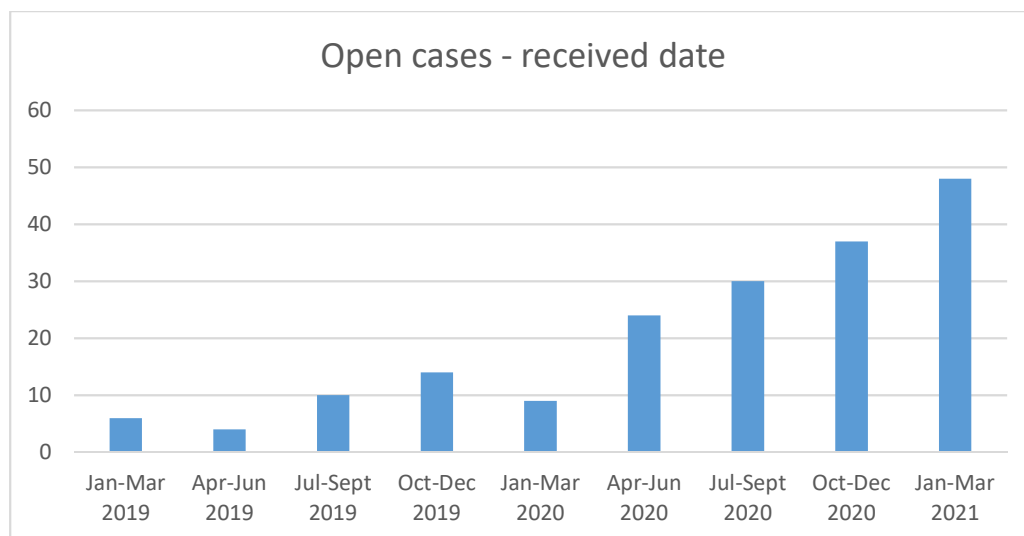


27% of cases (168) were marked resolved within the first 10 days (0-9 days). Of the 168 cases resolved within the first 10 days, 164 were marked as having taken 'no action'.

66% were marked resolved within the first 90 days (0-89 days). (The Local Enforcement Plan says that the Enforcement Service will endeavour to resolve enquiries within three months of their receipt. There will be, however, times where formal enforcement action is required, such as the issue of an enforcement notice, and the timescales involved will not make this possible).

Of the 615 cases resolved, 17 (2.7%) took longer than one year. Of the 181 open cases, 34 had been open since 2019.

They were received:



Of the open cases, 8 are classified as 'highest' or 'high' priority, with the oldest in the 'highest' category open since October 2020 and in the 'high' category open since July 2020.

Of the 795 cases received since 2019

- 13 were categorised as highest priority
- 24 were categorised as high priority
- 69 were categorised as medium priority
- 689 were categorised as low priority (87%)

Of the 795 cases received, 603 (76%) were recommended for 'no action'.

21 cases had a notice served since 2019:

- 1 Enforcement Notice
- 2 Enforcement Notices – Change of Use
- 3 Enforcement Notices – Operational Development
- 12 PCNs
- 1 Section 215
- 2 Temporary Stop Notices

Meetings

Discussion with Planning Enforcement Officers

Members met with the two (then) Planning Enforcement Officers on 11 March 2021 (one of the Officers has since moved to a different role in the Council). Officers were asked about their workload and experience, as well as the processes by which cases came into the Council and the procedure for an enforcement case getting logged onto the system.

Officers discussed the current makeup of the team (two Officers supported by an administration team), as well as the iterations that had previously existed (two and a half FTE enforcement officers, followed by a team of two Officers with a dedicated administration support officer). In the current situation, the administration team only log cases and correspondence onto the system, therefore Enforcement Officers are carrying out the majority of the administration work. Members heard how this is taking time away from investigating cases.

Officers said that the support provided by the administration team could sometimes cause issues, as by the time cases arrived on the Planning Enforcement Officers desk, they were already late as day 'one' was when the complaint arrived in the Council (see the Mid Devon Local Enforcement Plan for target timelines within the Council).

Members also heard that the removal of the free planning advice service (which has been replaced by a paid for advice service and the lack of a Tree Officer were both causing issues. Enforcement Officers were having to pick up the fallout from these issues, either spending time directing people to the right resource in the Council, or often having to pick up the 'tree' work that would otherwise be picked up by a Tree Officer. The same is true with listed buildings if a Conservation Officer was not available. Officers stressed that they are not experts in those fields and that it should be the specialists carrying out that work.

The Officers talked about the decision making process following a site visit, and how some decisions would involve discussions with a Planning Officer or the Area Team Leader. The Development Manager and Legal may also become involved if there was any formal enforcement process. Officers suggested that delays could occur with regards to serving notices, which could be with the legal team for several months after the notice had been drafted.

Members also heard how a full written report has to be prepared before legal action is taken, which went to the Development Manager to give the go ahead for the serving of a notice. This could also cause delays if the Development Manager was unavailable. Previously, this process was less burdensome as an email notification or a verbal agreement was all that was required. Officers were also asked about temporary stop notices and whether they should have authority to deal with this immediately, Officers suggested that sometimes their professional, experienced judgement should be enough.

Members asked Officers about the use of technology and whether tablets were used on site. Officers stated that they do not use technology, but that such technology would assist them do their role if they linked to the Uniform system. One Officer had used

them in a previous Local Authority, and from experience believed they would promote more effective use of time.

Members took time to understand the processes for various investigating techniques and options available like Planning Contravention Notices (PCNs) and the numbers issued by Officers, as well as the time spent on mediation.

With regards to conditions, Officers suggested that it would be better if pre decision negotiation was improved as there was a lack of resource to monitor conditions and that conditions were being relied upon too heavily. This can cause a lot of extra work for the Enforcement team.

Discussion with administration staff

Members met with the three Planning Administration Support staff on 15 April 2021. Officers were asked about their experience and training received, as well as the role they carried out with regards to enforcement.

The Officers said that the only training they had received was a few hours on how to use the UNIFORM system. The Officers were clear that they did a limited amount for enforcement, only logging cases, filing ongoing correspondence and setting up new cases. An Enforcement Officer would inform them how to deal with an issue and what priority category to put it into.

The Officers were also asked about any delay in logging cases or if there was a backlog. Officers replied that for correspondence that needed logging onto the system they were about a week behind and that for new cases there was no backlog.

Officers said that they would normally have four members in their team, but that position is currently vacant. This means that the hours provided to enforcement are currently approximately 21 hours per week. They had previously had support from a colleague in Leisure Services who had been redeployed during lockdown, but that person had gone back to their job. Members suggested that the team was doing well seeing the amount of work that was before them and that the email traffic had increased during lockdown.

Discussion with Area Team Leaders

Members met with two Area Team Leaders, one of which is responsible for enforcement, on 17 May 2021, and again with the Area Team Leader responsible for enforcement on 25 May 2021. Officers outlined their experience and roles. The Area Team Leader responsible for enforcement is also responsible for another planning team within the Department, and described each as a full time role.

The Area Team Leader responsible for enforcement said that when she took on the role five months ago and she became aware of the build-up of enforcement cases, the backlog of site visits and that only high priority cases were being progressed. The Area Team Leader suggested that without dedicated admin support, the Enforcement Officers were doing a lot of administration tasks that could then lead to delay. Other pinch points had appeared throughout the pandemic, particularly due to a period of

time when site visits could not take place due to lockdown. It was hoped that the arrival of the new Enforcement Officer and the agency worker would make a real difference to the backlog of cases.

Members asked about the scale of prioritisation for enforcement cases and how cases are categorised. The Officer stated that this is set out in the Local Enforcement Plan, and that Officers were adept at managing those. With regards to retrospective applications, the Officer said that these are considered if it was felt that it was able to rectify the situation through the planning process.

Members asked about planning conditions and Officers agreed that conditions should only be proposed that were necessary, particularly as monitoring of conditions was difficult. It was suggested that one option could be to have an Enforcement Monitoring Officer which could allow the Enforcement Officers to focus on enforcement.

When further asked about her views on the staffing structure, the Officer said that she felt that she could do the role she is doing if there was a Principal Enforcement Officer, alongside three other Enforcement Officers and possibly an Enforcement Monitoring Officer. Or alternatively, a team could comprise of: a Principal Enforcement Officer, with at least two Enforcement Officers with a Monitoring Officer and dedicated support who would deal with all the administration. The Officer also suggested a dedicated legal solicitor was needed.

With regards to technology, it was agreed that tablets that would allow Officers on site to take photographs and make notes which would feed straight into the system would be useful – as long as the systems linked up. She did raise that there may also be issues with black spots in rural areas.

Discussion with Development Manager

In discussions, the Officer stated that the relationship between planning and legal was vital and that this was the first authority that she had worked for which had no dedicated planning solicitor. Despite the current relationship between planning and legal working well, a planning solicitor would provide a dedicated point of contact that would enable conversations to take place before any enforcement process commenced. Currently, the legal department were often very busy and could not always get to the planning work requested.

Members heard that Enforcement Officers regularly used their discretion, particularly around less complex issues, or in inviting retrospective planning applications. Only a small percentage of cases are brought before the Development Manager, as many were discussed instead with the Area Team Leader.

When asked about risk, and whether the risk of appeal was a consideration when considering stop notices, the Officer stressed work would take place with legal to ensure that an enforcement notice was watertight. The report to legal would have all the necessary details and it was hoped that all the details of the breach of planning control were identified; appeals did occur but that was not a reason not to use an enforcement notice.

Asked why enforcement cases did not appear on 'Public Access', the Officer responded stating that they were confidential until an outcome had been achieved, there was a need to protect staff and some issues could be very volatile.

To conclude, the Officer stated that enforcement was always a complex area and that expectations were huge. She felt that the enforcement team worked well, but in order to meet expectation and ensure an efficient service there was a need for a Principal Enforcement Officer with at least three other officers and some dedicated administration support.

Discussion with Head of Legal (Monitoring Officer)

When asked if a planning specialist in the legal department would benefit the Council, the Officer said that there was always a need for more staff, but there was also a need to balance the resource, control workload and plan work. She stressed that the reality is that in the public sector there are very few planning solicitors and they are notoriously hard to recruit. Whilst she approved of the notion, she stressed that Members may be disappointed and that the authority may benefit more from training our own.

Asked about the possibility of sharing legal services with other local authorities, the Officer stated that there had been conversations with other authorities, with no interest. The use of a shared service, however, would provide access to specialist lawyers and she believed this should be pursued and that her replacement should take this forward. Members felt that this matter was worth exploring as this would provide greater capacity and skills.

The Officer stressed how hard it was to plan work, as issues could arise that would become a priority and the team could not control what they had to deal with – this is the case across all authorities. A focus on the quality and timing of instructions, however, from other Officers could help, along with checking that legal were available to deal with the work. She felt that knowledge management across the authority was inadequate as legal were being used as the first resort for advice, rather than learning from other Officers/previous cases. She suggested teams could have a repository of knowledge which could be referred to before referring to legal.

The subject of risk aversion was raised and whether it was perceived as easier/safer to send issues to legal rather than teams considering how to progress themselves. With regards to enforcement, the Officer responded the legal service have a good relationship. In some instances, across the Council, legal would like to see a full assessment of the case by an Officer before it came to them. Training could help with this.

Asked about Stop Notices and whether these could be issued quickly by enforcement officers, the Officer stated that there were many ways of dealing with these. Enforcement Officers could send the notices, but they would still need legal advice.

Discussion with Head of Planning, Economy and Regeneration

Members met with the Head of Planning, Economy and Regeneration to discuss the proposed recommendations of the Working Group. Discussion took place on the level of resource previously recommended by Officers, and the level seen in neighbouring Districts. With regards to the recommendation on a dedicated planning solicitor, the Officer felt that dedicated resource would be beneficial, but that a broad range of speciality was still required and a separate 'planning' solicitor may not be necessary.

In discussions, the Officer stressed the need for record keeping with what action had been taken and why, particularly if formal legal action is taken. She also informed Members that, with regards to a Tree Officer, a shared service had previously been explored in depth but that this had not panned out.

Discussion with East Devon District Council

Members met with the Development Manager at East Devon District Council (EDDC) to hear how enforcement operates. Members are particularly grateful for the Development Manager's time and helpful insights.

East Devon has a dedicated planning specialist in legal and Members heard how important that was for the enforcement team. In terms of resource, East Devon has three enforcement officers (their population in 2019 was 146,284, in Mid Devon it was 82,311). They have a planning admin team who support the Enforcement Officers by logging cases on the system. The enforcement officers will then do all other administration tasks. They receive approximately 700 cases a year, and an enforcement officer will have between 80-100 open cases each at any one time.

In terms of conditions, Enforcement Officers at East Devon will proactively monitor some conditions by choosing certain sites to monitor – this could be, for example, a site with a developer who is known to have breached conditions before or a particularly large project.

Each Enforcement Officer at East Devon has an iPad which is connected to the telephone network and has access to emails. The iPad is also connected to their systems (Uniform and IDocs). This has significantly improved efficiency - officers are able to show maps/plans on site, take photos and log things on the system immediately. They will also call a colleague for advice (and share photos with that colleague on site) to resolve issues immediately in person.

The enforcement officers have powers to make some decisions on the ground – they use their judgement and may immediately close a case on site. They may recommend that building is stopped and follow up once in the office. They cannot take any formal action on site, but may caution someone on site. They may also take a photo, call their Manager and agree course of action and relay that decision on immediately site.

Enforcement Officers at East Devon have to write a full case before going to legal. In terms of timescales, if it was a stop notice or a temporary stop notice, legal would action it that day or the next day. Any other enforcement notice would take about a week.

When asked what information East Devon put on the planning portal, Members heard that East Devon used to put basic information up on an enforcement case, but following concerns related to Data Protection, now only make publically available details where formal enforcement notices have been served. The Development Manager stressed that some Local Authorities had been in trouble for putting too much information and as a result many are now reigning back what they put in the public domain.

In terms of trees, East Devon have three tree officers that they share with the countryside team.

When asked about how important it is in terms of deterrence to issue notices, the Officer said they would not want to serve enforcement notices that get quashed. It is, however, important to be seen to be doing something even if it is just forcing retrospective planning applications.

Case Studies

The Chairman of the Working Group met Planning Enforcement Officers on 24 June to discuss Enforcement cases in detail. In total 15 cases, selected at random, were reviewed, both open and closed cases since 2018. For each case, the Chairman looked at the date the case was reported, the date of the site visit, the action taken subsequently and the length of time taken for each step of the case. Cases ranged from removal of protected trees, unauthorised developments, untidy land, buildings without approval to conditions not being complied with. The review looked at enforcement actions including: temporary stop notices; tree replacement notices; other enforcement notices; and retrospective applications.

During the case review, it appeared that there are times when cases can sit within a Department, waiting for action, for a long period of time. For example, one case was sent to the Legal Department in May 2019, and there was no further action until June 2020. Another case was raised by Enforcement Officers in October 2018 and it took until August 2019 for a retrospective application to be submitted. The file then seemed to be lost in the system until determined in November 2020. This was followed by an enforcement notice which has been appealed and the case is still not resolved. This led Members to question how cases are monitored and followed up, and whether there is a process within teams for following up, particularly if cases have been sent to another Department for action.

Additionally during the course of the review, it became apparent that on a number of occasions it had taken a long time to progress an application received (following enforcement work) to being heard at Committee or resolved by delegated authority. One case took seven months to go from a retrospective application to being determined at Committee. There are also instances of actions being decided but then not followed through by the agreed action being taken.

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SCRUTINY WORK PLAN 2023-2024

Meeting Date	Agenda Item	Theme	Officer Responsible	Comments
TBC	Motion 583 – Protecting Rivers and Seas - make sure that planning on large development work with South West Water on planning infrastructure was working effectively relating to sewage and so on was appropriate. Continues	To stay.	Clerk looking for background information	To be agreed
17.06.23	Motion 564 – Inclusivity and Community Engagement – does Local Government work for women? Work needs to be continued. Some recommendations had been approved by the Scrutiny Committee and Full Council but they still needed to be finalised			To be agreed
19.06.2023	Increases to members allowances – Examine how this was dealt with by the Council. How do we encourage greater diversity at local elections?	No longer a matter for Scrutiny to look at		Completed
17.06.23	Review recommendations of the Planning Enforcement Working Group.	To stay		To be agreed
11.09.23	3 Rivers – Review once both external reports have been received.	Report to be pre scrutinised, audit to take lead] Francis Clarke to go to scrutiny.	Andrew Jarrett	

Meeting Date	Agenda Item	Theme	Officer Responsible	Comments
TBC	Participatory budgeting review	Going to Community PDG ?	Clerk looking for examples	To be agreed
TBC	National grid?			
TBC	Vacancy Issues internal recruitment issue of calibre. Recruitment strategies Look at current recruitment process. Process related			
14 August 2023	Establishment Update report		Matthew Page & James Hamblin	

Work Programme suggestions for the Scrutiny Committee to consider

Suggestions	Timetabling or other PDG
<p>Making Green requirements part of future planning applications – The Chairman commented that the Environment PDG would be a good place for this work to start. At the same time the Chairman will ask the Environment PDG to consider what Energy Efficient Standards need to go into go into new build properties.</p>	<p>Environment PDG ?</p>
<p>Can this committee and the Council support the installation of sprinkler systems into all new build residential properties. The Fire Service can provide displays. The Chairman asked for a demonstration of these systems to be arranged.</p>	
<p>Making the Exe Valley an Area of Outstanding Natural Beauty similar to other National Parks in England. There is an “A Road” travelling down it from Exmoor to Dartmoor. The idea was parked 7 or 8 years ago but the time may well be right, now. Planning Authorities state that there is a list and it takes 15 years or so to get this through National Planning. The Scrutiny Committee should ask for a presentation from the CEO’s of Exmoor National Park and Dartmoor National Park. We should encourage other agencies such as “Visit Devon” to get involved. Question as to whether this subject was for the Scrutiny Committee or whether it would be better dealt with by Environment/ Economy or Community PDG’s.</p>	<p>Environment / Community or Economy PDG ?</p>
<p>We should invite the National Grid in for scrutiny regarding their failure to provide sufficient capacity for new Solar Farms, Wind Turbines etc. to link to the National Grid.</p>	
<p>Vacancies at Mid Devon DC – What posts should be filled in order that we can deliver a service? “A moratorium on recruitment alone is not good”, we should look at the recruitment process itself.</p>	

<p>Use the LGA as much as possible, wait until the new administration is bedded in and then do peer reviews because we want to avoid “cosy parochialism”.</p>	
<p>Transparency – reduce the reliance on Part 2’s – only use them in extremes. When officers give advice – that advice should be given to the whole committee not just whispered to the Chairman under part 2. Look out the copy of the legislation relating to part 2.</p>	<p>Was this just a statement of intent?</p>