

Scrutiny Committee

Monday, 19 February 2024 at 5.30 pm
Phoenix Chambers, Phoenix House, Tiverton

Next ordinary meeting
Monday, 18 March 2024 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.

The meeting will be Hybrid and an audio recording will be made and published on the website after the meeting

To join the meeting online, [click here](#)

Meeting ID: 372 303 056 26

Passcode: fpUx9k

[Download Teams](#) | [Join on the web](#)

Membership

Cllr R Gilmour
Cllr G Westcott
Cllr D Broom
Cllr E Buczkowski
Cllr A Cuddy
Cllr G Czapiewski
Cllr G Duchesne
Cllr M Farrell
Cllr B Holdman
Cllr L Knight
Cllr R Roberts
Cllr S Robinson

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 - 16*)
To consider whether to approve the minutes as a correct record of the meeting held on Monday 15 January 2024
- 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 **Work Programme**
To review the existing Work Plan and consider items for the committee's future consideration, taking account of:
 - a) Any items within the Forward Plan for discussion at the next meeting;
 - b) Suggestions of other work for the committee in 2024/25.
- 8 **Whistleblowing Annual Report**
To receive a Verbal Report on Whistleblowing from the Corporate Manager for People, Governance and Waste
- 9 **Establishment Update** (*Pages 17 - 24*)
To receive the annual review of the Establishment from the Corporate Manager for People, Governance and Waste
- 10 **Motion 564 - Inclusivity and Community Engagement** (*Pages 25 - 38*)
To receive a report from the Working Group on Inclusivity and Diversity - Community Engagement - does local government work for women?

- 11 **Planning Enforcement** (Pages 39 - 72)
To receive a report from the Director of Place and Economy regarding
Planning Enforcement

Stephen Walford

Chief Executive

Friday, 9 February 2024

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access to the Council Chamber on the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact David Parker on:

Tel: 01884 234311

E-Mail: dparker@middevon.gov.uk

This page is intentionally left blank

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 15 January 2024
at 5.30 pm

Present

Councillors

R Gilmour (Chairman)
G Westcott (Vice Chairman), D Broom,
E Buczkowski, A Cuddy, G Czapiewski,
G Duchesne, M Farrell, B Holdman,
L Knight, R Roberts and S Robinson

Apologies

Councillor(s)

Also Present

Councillor(s)

J Buczkowski, S J Clist and D Wulff

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy
Chief Executive (S151)), Maria De Leburne (Director of
Legal, HR & Governance (Monitoring Officer)), Richard
Marsh (Director of Place & Economy), Paul Deal
(Corporate Manager for Finance, Property and Climate
Change), Laura Woon (Democratic Services Manager) and
David Parker (Democratic Services & Policy Research
Officer)

Councillors

Online

A Glover, S Keable, J Lock and L Taylor

Officers Online

58 APOLOGIES AND SUBSTITUTE MEMBERS (0:03:50)

There were no apologies for absence.

59 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0:04:01)

Members were reminded of the need to make declarations of interest where appropriate. There were no interests declared under this item.

60 PUBLIC QUESTION TIME (0:04:09)

The following members of the public asked questions:

Goff Welchman

In the written response to my questions at the previous Scrutiny meeting (which are being reported to you at this meeting) the S151 Officer, Mr Jarrett, stated that many/most of the Working Group's "lessons learned" were in place from the outset of the 3RDL company - but he was not specific. Would the Committee Chair, please ask the S151 Officer, Mr Jarrett, to inform me exactly which of the "lessons learned" were already in place from the outset of the company?

Response:

As has been confirmed on numerous occasions, prior to setting up the company, the Council has:

Secured legal, financial and banking advice.

Visited a number of Councils that had already set up similar entities.

Appointed 3 directors who had a cross section of construction (both residential and commercial) and financial experience.

Received briefings and reports to ensure clarity of understanding and decision making.

The company's accounts have been audited by external auditors.

In 2019/20, further financial and governance advice was secured from external parties – all recommendations made by these bodies and other Council meetings were implemented.

Regular performance/risk reports were provided to the relevant Council meetings.

Prior to the soft close decision further independent financial advice was obtained regarding the ongoing viability of the company.

I believe this shows that the Council undertook sufficient due diligence prior to setting up and during the commercial life of its wholly owned development company.

Response from Deputy Chief Executive (S151) Officer

Louise Doyle

QUESTION 1 – KPIs

The Enforcement service is not meeting the needs of residents, or creating public confidence, or acting as a deterrent, I believe that needs to change. The Local Planning Authority's (LPA) approach appears to be enforcement averse, going beyond expediency or discretion or regularisation first.

Reporting new or closed or total case numbers is not a KPI

Will the LPA be creating measurable objectives, targets, timelines it can be measured against?

QUESTION 2 – TRANSPARENCY OF CASE MANAGEMENT

Can a spreadsheet/breakdown of cases for the last two years be provided to Scrutiny or Planning so that elected members can have an insight into how cases are being categorised, investigated and closed?

QUESTION 3 – ENFORCEMENT NOTICES ISSUED

The LPA advised Scrutiny in July that 25 Notices had been recently been served. The DLU figures for the year to September showed 15. Which data is correct please? How many Notices have been issued since and the total case numbers being quoted, are they opening numbers at the start of the quarter or closing numbers?

QUESTION 4 – ENF POLICIES 1-6

Does the LPA consider that it is working and planning to work in the future based upon what it is proposing today in alignment to Mid Devon's Enforcement Policies ENF 1 to ENF 6? I believe there is a disconnect and can anybody tell me what happens to the revised enforcement plans that was handed to the DM at the end of 2022.

QUESTION 5 - 95% LOW PRIORITY CASES

The Enforcement Plan categorises Low Priority Cases as very minor breaches. 95% of cases are being categorised as low. That, to me, is surprising. Can the LPA confirm that all 260 low cases sit squarely within the description given to "low priority" in the Enforcement Plan? How is "limited harm" being defined?

QUESTION 6 – WHAT HAPPENS TO 95% LOW PRIORITY CASES?

The LPA states it must prioritise high-risk/impact breaches because it is not equipped financially or in terms of staff to address every breach. What exactly does this mean in real terms in respect of the investigation and resolution of low or medium priority cases, which represent 98% of cases?

QUESTION 7 – BREACHES OF CONDITIONS

Planning Conditions are to mitigate or control some aspect of a development. Each is required to meet the 6 Tests including being necessary. When Conditions are then promptly breached or not discharged - impacting on amenity - why is the LPA not enforcing what the LPA considered to be necessary at the grant of consent?

QUESTION 8 – FROM BAD TO WORSE

Who made the decision in the autumn to run enforcement service and 300 cases with one officer and now with a temp and template letters?

Upon what rationale will that provide an effective service?

How many hours per week of planning officer time will be made available to deal with enforcement matters?

QUESTION 9 – ATTRACTING & RETAINING TALENT

The enforcement salary on offer is £16 to £17.50 an hour. This is not going to attract or retain talent in Mid Devon. The temp enforcement officer job is being offered at £40 - £50 an hour. Wouldn't it be better to invest in full time staff at a far more generous salary?

The Chairman pointed out that as an LPA, Mid Devon District Council does not have a statutory duty to enforce but does it as it believes that it has a duty of care to its residents. The Chairman further, indicated that as these questions had not been

received two clear days in advance of the meeting that a written response would be provided.

Barry Warren

My questions are prompted by the content of Item 10 on your agenda – Planning Enforcement.

In paragraph 1.2 of the report it states that ‘planning enforcement is an important part of planning activity’. It also states that it ‘is discretionary and must be proportionate’.

Question 1 - Who decides what is proportionate and who uses the discretion – that is the officer name and/or position?

Response:

Matters relating to planning enforcement are guided by relevant legislation, policy and case law. Enforcement officers will typically consider cases in order to understand pertinent facts and establish a position in terms of the path that the LPA will pursue in seeking to redress any alleged breach and the proportionality of any enforcement actions. Ordinarily, this would then be discussed with the line manager with further input from more senior officers, as required.

Obviously, given the legalistic nature of enforcement work, legal input may also be secured in supporting the LPA to reach a view on alleged breaches. This can include the commissioning of external legal opinion, if deemed appropriate or necessary.

Question 2 - Is there any elected member input to these decisions?

Response:

Where possible, officers seek to keep Members informed in terms of progress in relation to alleged breaches.

Input or involvement from elected Members is not sought in relation to planning enforcement given the sensitive legal nature of the work. Obviously, Member involvement can sometimes be secured where an application for regularisation comes forwards and is determined via the planning committee.

Question 3 - What guidelines and/or policies are used that are set out for the public of Mid Devon to see and understand?

Response:

The Council’s planning enforcement policies are set out on the Council’s website. The enforcement policy is due for review, which is in progress.

In paragraph 1.3 it advises that in the majority of cases landowners/developers comply with regulations and restrictions. To enable that statement to be put into perspective:

Question 4 - In the first two quarters of 2023 how many planning applications were received and how many separate reports of planning breaches were made to MDDC?

Response:

In the first two quarters of 2023, MDDC received 567 planning applications (of various types) and, as per the report, received 165 reports of planning breaches.

In paragraph 2.3 is a table giving the number of cases which are classified as 'Low', 'Medium' and 'High'.

Question 5 - Who makes these classifications – that is the officer name and/or position?

Response:

In the first instance, Enforcement Officers will determine how a case is classified. This will be based on a view as to the specific details relating to the case, informed or supported by site visits or requests for additional information, as required. Cases are regularly reviewed with line managers and it could be possible for the classifications to be adjusted following conversation with managers or where the situation materially changes.

Question 6 - Is there any elected member input to these decisions?

Response:

As before; there is not direct elected Member input in to the classification of cases owing to the legally sensitive nature of planning enforcement.

Question 7 - What guidelines and/or policies are used in making these decisions that are set out for the public of Mid Devon to see and understand?

Response:

This is set out within the Council's enforcement policy which is on line.

Question 8 - Are the 'informants', elected members or members of the public, advised as to the classification and action or non-action taken?

Response:

Complainants are not automatically notified of the classification level of the case. Members can be updated on progress on specific cases, should they wish to be.

In the report to Scrutiny Committee of the 17th July 2023 at Paragraph 2.4 a table sets out the recommendations of the Working Group. Recommendation 1 has failed as there are now no Planning Enforcement Officers.

Question 9 - What is the current position with regard to recommendation 2 – have we a planning solicitor?

Response:

Yes; the Council has an interim Planning Solicitor. Ref: recommendation 1 – the recommendation did not fail, as the Council did recruit officers – the situation has simply now changed in that the recruited officer has resigned. Nonetheless, the Authority does have interim resource in the form of agency cover with an interim officer due to join the authority imminently.

Recommendation 6 was not implemented as the Director of Place advised that this was not necessary as it could be carried out by the portfolio holder for Planning and Economic Regeneration.

Question 10 - How many planning enforcement cases since July 2023 have been referred to this member and how many cases has he enquired or intervened in?

Response:

The response in July 2023 advised that the recommendation had been discharged through the continuous improvement cabinet portfolio which existed under a previous Council administration. Enforcement activity is now overseen by the Cabinet Member for Planning and Economic Regeneration. Enforcement cases are not referred to the Member as standard; but the Member is kept informed on high profile or high risk cases and is obviously able to enquire after any other enforcement cases, as they see fit.

Recommendation 8 in relation to the Local Enforcement Plan was not actioned and in the July report it was stated that it would be presented for approval in the autumn of 2023.

Question 11 - Where is this document please?

Response:

The document is in draft form but its progression was delayed owing to both work pressures and changes in resources. Work has been continuing and the updated policy is expected to come forwards for review and approval soon, but the item does not currently appear to be on the current Forward Plan. Officers will ensure that this is re-entered on to the plan.

Question 12 - Finally. Is it the case that ‘financial considerations’ are driving planning enforcement decisions in MDDC rather than proactive enforcement as needed?

Response:

It is the case that the Authority is reasonably seeking to balance the competing pressures of managing within its budgets and continuing to provide a robust enforcement service. It is not the case that the Authority is solely considering planning enforcement from a financial perspective as, if this were the case, the Authority could possibly determine to seek to manage without any dedicated enforcement officers.

Responses from the Director of Place and Economy

Paul Elstone

My questions relate to Agenda Item 10 Planning Enforcement.

Question 1.

When deciding on if a planning breach is to be placed into the high priority category, is any consideration given to the number of complaints received and particularly if the complaints are raised by affected Town and Parish Councils plus the Grand Western Canal Joint Advisory Committee etc?

Response: The severity of a planning breach is determined by the nature of the alleged breach, rather than the number of complaints received or who the complaint/report is received from.

Question 2.

Is any consideration given when determining the high priority category to the numbers of MDDC residents impacted by the planning breach and which can be many hundreds even thousands?

Response: Although the priority of a planning breach is determined by its severity, as set out before, each case will be judged on its own facts and officers will be mindful as to the extent of the impact of a breach. It could therefore be the case that a matter was determined to be of a higher severity where impact or harm accrued to more residents.

Question 3

It is known to many including Members this Scrutiny Committee that there is at least one applicant's planning condition breach or should I say breaches that has been ongoing since 2018 and to which my questions 1 and 2 fully relate.

Yet no visible enforcement action has been implemented. Even recently I was advised in an email from an MDDC Officer that there is no current intention to do so. I feel confident it is known by the Director of Place, the planning breaches to which I refer.

Will the Director of Place please fully investigate this position and report back as to why no enforcement action has been taken despite these planning breaches having major, far reaching and increasing impacts on a wide section of the Mid Devon Community?

Response: I believe I know of the case to which Mr Elstone is referring and I would simply say that this case is in hand and being dealt with by the LPA.

Responses from the Director of Place and Economy

The next two questions relate to answers received to my question of the Scrutiny Meeting of the 18th December 2023

Question 4

Answer to Question 1 states.

Quote:

"The Council would like to make it explicitly clear that there has been no officer threats"

The MDDC Officer letter I refer to in my question, the last sentence says the following.

I ask that any further disclosures cease with immediate effect. If this does not occur then we will have no alternative but to take further action which may include a court application for an injunction//reporting for a criminal offence under S170 Data Protection Act 2018.

Will the Committee Chairman agree that the answer to my Question 1 be struck out as it is not fact and can be considered defamatory.

Question 5

The answer to question 5 says:

“Council officers are not aware of the email being referred to”.

Are the current Council Leader and Deputy Leader also saying they are not aware of the document in which they are both named. A document dated the 17th February 2020 and directed to this Council’s CEO ?

The Chairman indicated that as these last two questions had not been received two clear days in advance of the meeting that a written response would be provided.

Kate Clayton-White

I attended the Scrutiny Committee Meeting held on Monday 18th December during which I asked 2 questions relating to 3 Rivers Developments Ltd during my 3 minute’s worth of thoughts and comments about the Council’s and the Scrutiny committee’s handling of the matter.

However while my questions and subsequent answers are included in the minutes, my comments are not.

On 22nd Feb2023 (Full Council Meeting), 16th March 2023 (Economy PDG) and 4th April 2023 (Cabinet Meeting) I made comments and asked questions about the Council’s proposed increase in car parking charges. In each case, my comments and questions were both published in the minutes.

My question is as follows:

Why were my comments missed out of the minutes of Monday 18th December? I emailed them to you on 18th December along with the questions.

(Or does the Scrutiny Committee operate a different minutes recording system to other committees?)

I would like my full comments to be included in the minutes.

Response: The Constitution of Mid Devon District Council states that “the minutes shall contain a condensed written record of questions and statements and they are not supposed to be particularly complex so they are not necessarily a verbatim record of what goes on at every meeting. The Chairman did, however, agree to look at the minutes again to see whether some of Ms Clayton-White’s comments should be included.

Response from the Chairman

Nick Quinn

A Statement by N Quinn - Local Resident

I wish to express my disgust at the way this Administration is behaving and the lack of proper oversight by this Scrutiny Committee.

When the Leader and the Chair of Scrutiny Committee were elected, both spoke about the Openness and Transparency that they were going to champion.

Your Chair of Scrutiny said: *"I can tell you right now, there is no accountability without transparency and I will not tolerate lack of transparency or lack of accountability"*
Since then there was the review into 3 Rivers, which was hamstrung by the terms of reference written by Officers and a timescale set by the Leader - both of which were agreed by Chair of Scrutiny.

Although the report was published, the review was lacking in both transparency and accountability.

Last July, Council passed Motion 593 requiring *"an open and transparent review of leisure pricing"*.

These new leisure prices are already being charged – but they are based on a secret external report; that was put into a secret Officer report; which was discussed, in secret, by Community PDG before being approved, in secret, by Cabinet.

I asked Cabinet why this had not been done Openly and Transparently, as required by Motion 593. The Leader told me *"It was 'Open and Transparent' because all 42 Members had the opportunity to see all the secret papers"*.

It is in your remit to *"scrutinise decisions made, or actions taken, whether by the Cabinet or another part of the Council or any of its Committees"*.

It seems to me that the promises of transparency and accountability are just hollow words and that this Scrutiny Committee, which is supposed to be a public guardian, is failing to do a proper job.

Thank you

The Chairman responded that after the 3 Rivers Developments – Lessons Learned report (which had all been in part 1), had been delivered she deliberately went around the committee and asked each member if they had any questions, bearing in mind that this was a cross party committee, she had given all Members the chance to raise questions publicly and therefore she had shown the openness and transparency that had been promised. With regard to the Community PDG some of the leisure pricing had to be dealt with in part II due to the commercial sensitivity.

61 **MINUTES OF THE PREVIOUS MEETING (0:38:54)**

It was AGREED that the minutes of meeting held on 18th December 2024 would be approved at the next meeting of the Scrutiny Committee on 19 February 2024.

62 **DECISIONS OF THE CABINET (0:43:33)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 9th January 2024 had been called in.

63 **CHAIRMAN'S ANNOUNCEMENTS (0:43:40)**

The Chairman wished everyone a Happy New Year.

64 **WORK PROGRAMME (0:43:45)**

The Committee had before it and **NOTED** the *Forward Plan and the *Scrutiny Work Programme.

The following was discussed:

- Staffing levels and staff morale – this would fall within the Establishment report coming to the Scrutiny Committee on 19.02.24
- Motion 564 – Inclusivity and Community Engagement – Does Local Government work for women? – reporting back on 19.02.24
- Protecting Rivers and Seas (Motion 583) coming back to Scrutiny Committee on 18 March 24. The Director of Place and Economy was asked to invite representatives from South West Water and the Environment Agency.
- The order in which Cabinet Members would be asked to present their portfolios was agreed as follows:
 - Cabinet Member for the Working Environment – 19.02.24
 - Cabinet Member for Planning and Economic Regeneration – 18.03.24
 - Cabinet Member for Community and Leisure – 15.04.24
 - Cabinet Member for Finance – 17.06.24
 - Whenever St George’s Court was transferred to the Housing Revenue Account (HRA) the Cabinet Member for Housing and Property Services should be invited to present his portfolio and other Cabinet Members moved back appropriately.

Note: *report previously circulated

65 **REGULATION OF INVESTIGATORY POWERS ACT (RIPA) REPORT (0:54:55)**

The Director of Legal, HR & Governance and Monitoring Officer gave a verbal report to confirm that Mid Devon District Council had received no requests under the RIPA regulations.

RIPA reports referred to covert surveillance in anything where an offence would attract a sentence, if convicted, of over 6 months imprisonment. Fly Tipping might be such an offence where covert surveillance might be used. Any application would be dealt with by the Director of Legal, HR & Governance and Monitoring Officer.

RIPA reports were audited by the Investigatory Powers Commissioners Office.

66 **MDDC BUDGET 2024-25 - REVIEW (0:58:04)**

The Committee had before it and **NOTED** the *Medium Term Financial Plan update for 2024/25 – 2028/29.

The Cabinet Member for Finance introduced the report mentioning that it was a report that covered five years across all funds and examined how the Council would strategically manage its finances to support the delivery of the priorities listed in the Council’s Corporate Plan 2020-2024 and in future years beyond that which will be covered by the future emerging Corporate Plan. The budget had to be affordable and

be able to manage net spending within affordable limits. The Cabinet and Policy Development Groups had been kept updated and there had been dedicated engagements with business and public consultation within the budget element through the resident's survey.

Consideration was given to:

- The £90,000 shortfall would be taken from earmarked reserves.
- Business Rates still had to be finalised but it was hoped that this would impact positively on the accounts and so the shortfall may be less than £90,000.
- Community and Environment PDG's still had to consider whether any further savings could be made.
- The unfair terminology used by Central Government relating to "Core Spending Power" and the "Funding Guarantee".

Note: (i) *report previously circulated.

(ii) Councillor David Broom arrived at 18.38hrs.

67 **KPI'S ON PLANNING ENFORCEMENT (1:10:46)**

The Committee had before it and **NOTED** a *report on Planning Enforcement within Mid Devon.

Consideration was given to:

- A Review of KPI's.
- Officer Resource.
- The permanent Planning Enforcement Officer had recently resigned, the Development Management department were now trying to recruit a permanent replacement but such professionals were hard to recruit across the nation. There was a limited pool of candidates across the country due to this being a subset of Planning Officials. An agency Planning Enforcement Officer had been recruited to join the Council on a temporary basis.
- The implementation of the new Planning Enforcement Policy, as requested by a working group of the Scrutiny Committee. The draft policy could go through the Planning Policy Advisory Group (PPAG) or straight to Cabinet for approval depending upon the situation. The Chairman asked that it should be reviewed by the Scrutiny Committee.
- The East Devon District Council Planning Enforcement model was being used as the base for the new enforcement policy.
- Rates of pay and provision of professional development opportunities to attract staff.
- The existing High Level cases would be picked up by the new Planning Enforcement Officer, but as they were more complicated matters, they took longer to deal with and so it was impossible to put a time scale on how quickly the backlog could be cleared.
- The current predicament had not had any bearing on response times for the various classifications. The number of cases overall was creeping up.
- Publicising those cases that had been prosecuted to send a message to others that Mid Devon District Council was not a soft touch – the recent success requiring the offender to demolish a building had been publicised but publishing regular case studies could be challenging.

- Planning Breaches did not bring in any income, the Council had some power over fee setting of retrospective planning applications but it could never raise enough revenue to cover its costs.
- Mid Devon DC was now the top performing authority in the South West for processing planning applications within eight weeks.
- During the last Council 50% of Planning Committee decisions that were taken against the advice of officers were overturned at appeal. Planning Appeals took a lot of officer time and resources and took officers away from front line tasks. Enforcement performance did have scope for improvement but it was now in a much better position to be managed.
- Within classifications, there are four classifications but only three are shown on the schedule, because the Highest category was included within the Higher Category

Note: *report previously circulated

(The meeting ended at 7.02 pm)

CHAIRMAN

MID DEVON DISTRICT COUNCIL – NOTIFICATION OF KEY DECISIONS

February 2024

The Forward Plan containing key Decisions is published 28 days prior to each Cabinet meeting

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
February					
New Homes Safety Policy To receive a new policy which incorporates the existing Gas Safety Policy, Asbestos Management Policy & Fire Risk in Communal Properties Policy. New Policy includes regulated electrical safety checks being introduced to social housing landlords by the Social Housing Regulation Bill.	Homes Policy Development Group Cabinet Council	16 Jan 2024 6 Feb 2024 21 Feb 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
Revised Garage, GGRP and Parking Space Policy To receive the revised Garage, GGRP and Parking Space Policy.	Homes Policy Development Group Cabinet	16 Jan 2024 6 Feb 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Contractor for the Minor Works Contract 2024 - 2028 To receive a report on Contractors for Minor Works Contract 2024-2028.	Cabinet	6 Feb 2024	Mike Lowman, Building Services Operations Manager	Cabinet Member for Housing and Property Services	Part exempt
Contractor for the Vinyl Flooring Contract 2024 - 2028 To receive a report on Contractors Flooring Contractors 2024-2028.	Cabinet	6 Feb 2024	Mike Lowman, Building Services Operations Manager	Cabinet Member for Housing and Property Services	Part exempt
Revised Pets and Animals Policy To receive a report on Revised Pets and Animals Policy.	Homes Policy Development Group Cabinet	16 Jan 2024 6 Feb 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
NDR DRR Policy Amendment To receive a report on NDR DRR Policy Amendments.	Cabinet	6 Feb 2024	Corporate Manager for Revenues, Benefits, Corporate Recovery, Development Management and Corporate Fraud	Cabinet Member for Finance	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Policy Framework To receive a report on Policy Framework.	Cabinet Council	6 Feb 2024 21 Feb 2024	Democratic Services Manager Laura Woon	Leader of the Council	Open
National Non Domestic Rates (NNDR1) To receive a report on National Non Domestic Rates (NNDR1)	Cabinet Council	6 Feb 2024 21 Feb 2024	Dean Emery, Corporate Manager for Revenues, Benefits and Recovery	Cabinet Member for Finance	Open
Business Rates Tax Base To receive a report on Business Rates Tax Base.	Cabinet Council	6 Feb 2024 21 Feb 2024	Dean Emery, Corporate Manager for Revenues, Benefits and Recovery	Cabinet Member for Finance	Open
Pay Policy To receive a report on Pay Policy.	Cabinet	6 Feb 2024	Matthew Page, Corporate Manager for People, Governance and Waste	Cabinet Member for Working Environment	Open
2024/25 Budget Update To consider a report from the	Cabinet	6 Feb 2024	Andrew Jarrett, Deputy Chief	Cabinet Member for Finance	Open

Page 6

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Deputy Chief Executive (S151) proposing the 2024/25 Budget and recommends the Band D Council Tax charge for 24/25			Executive (S151)		
2024/25 Treasury Management Strategy To consider a report from the Deputy Chief Executive (S151) proposing the 2024/25 Treasury Management Strategy and Annual Investment Strategy	Cabinet	6 Feb 2024	Andrew Jarrett, Deputy Chief Executive (S151)	Cabinet Member for Finance	Open
2024/25 Capital Strategy and Capital Programme To consider a report from the Deputy Chief Executive (S151) proposing the 2024/25 Capital Strategy and recommends the 2024/25 Capital Programme	Cabinet	6 Feb 2024	Andrew Jarrett, Deputy Chief Executive (S151)	Cabinet Member for Finance	Open
Qtr. 3 Budget Monitoring To consider a report from the Deputy Chief Executive (S151) on the Council's Financial position as at 31 December 2023	Cabinet	6 Feb 2024	Andrew Jarrett, Deputy Chief Executive (S151)	Cabinet Member for Finance	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
March					
S106 Governance To receive a report on S106 Governance.	Cabinet	5 Mar 2024	Joanna Williams, Planning Obligations Monitoring Officer	Cabinet Member for Finance	Open
Customer Care Policy To receive the updated Customer Care Policy	Community Policy Development Group Cabinet	23 Jan 2024 5 Mar 2024	Lisa Lewis Corporate Manager for Digital Transformation and Customer Engagement	Cabinet Member for Working Environment	Open
Tenure Reform and Changes to the Tenancy Agreement - Project Plan To receive a project plan to tenure reform	Homes Policy Development Group Cabinet	21 Nov 2023 5 Mar 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
Corporate Performance and Risk Quarter 3 To receive a report on Corporate Performance and Risk Quarter 3.	Audit Committee Cabinet	26 Mar 2024 2 Apr 2024	Matthew Page, Corporate Manager for People, Governance and Waste	Leader of the Council	

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
<p>Contractor for the Unlicensed Asbestos Surveying and Removal Works 2024 – 2028 To receive a report on Contractor for the Unlicensed Asbestos Surveying and Removal Works 2024 – 2028</p>	Cabinet	5 Mar 2024	Mike Lowman, Building Services Operations Manager	Cabinet Member for Housing and Property Services	Part exempt
<p>Contractor for the Licensed Asbestos Surveying and Removal Works 2024 – 2028 To receive a report on Contractor for the licensed Asbestos Surveying and Removal Works 2024 – 2028</p>	Cabinet	5 Mar 2024	Mike Lowman, Building Services Operations Manager	Cabinet Member for Housing and Property Services	Part exempt
April					
<p>Serious Violence Duty Strategy To receive a report on Serious Violence Duty Strategy</p>	Cabinet Council	2 Apr 2024 24 Apr 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Community & Leisure	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Planning Enforcement-Enforcement Policy Update To receive a report on Planning Enforcement Policy Update.	Scrutiny Committee Cabinet	18 Mar 2024 2 Apr 2024	Angharad Williams, Development Management Manager	Cabinet Member for Planning and Economic Regeneration	Open
New Right to Buy Policy To receive a report on New Right to Buy Policy.	Homes Policy Development Group Cabinet Council	19 Mar 2024 2 Apr 2024 24 Apr 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
Silverton Neighbourhood Plan To receive a report on Silverton Neighbourhood Plan.	Cabinet Council	2 Apr 2024 24 Apr 2024	Tristan Peat, Forward Planning Team Leader		Open
Report of the Car Parking Working Group To receive a report on Car Parking Working Group	Economy Policy Development Group Cabinet	7 Mar 2024 2 Apr 2024	Matthew Page, Corporate Manager for People, Governance and	Cabinet Member for Planning and Economic Regeneration	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
			Waste		
SFS (Specialist Fleet Services) Transport Contract To receive a report on SFS (Specialist Fleet Services) Transport Contract	Economy Policy Development Group Cabinet	7 Mar 2024 2 Apr 2024	Matthew Page, Corporate Manager for People, Governance and Waste	Cabinet Member for Planning and Economic Regeneration	Open
Serious Violence Duty Strategy To receive a report on Serious Violence Duty Strategy	Community Policy Development Group Cabinet Council	26 Mar 2024 2 Apr 2024 24 Apr 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Community & Leisure	Open
The Statutory Duty to Conserve and Enhance Biodiversity To receive a report on The Statutory Duty to Conserve and Enhance Biodiversity	Cabinet	2 Apr 2024	Jason Ball, Climate and Sustainability Specialist	Cabinet Member for Climate Change	Open
June					

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
CCTV Policy To receive the updated CCTV Policy	Community Policy Development Group Cabinet	26 Mar 2024 4 Jun 2024		Cabinet Member for Community & Leisure	Open
Single Equalities Policy and Equality Objective To receive a report on Single Equalities Policy and Equality Objective.	Community Policy Development Group Cabinet	26 Mar 2024 4 Jun 2024	Matthew Page, Corporate Manager for People, Governance and Waste	Cabinet Member for Community & Leisure	Open
Corporate Anti-Social Behaviour Policy To receive a report on Corporate Anti-Social Behaviour Policy	Community Policy Development Group Cabinet	26 Mar 2024 4 Jun 2024	Richard Marsh, Director of Place & Economy	Cabinet Member for Community & Leisure	Open
Community Safety Partnership (CSP) To receive a report on Community Safety Partnership (CSP)	Community Policy Development Group Cabinet	26 Mar 2024 4 Jun 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing		Open
Safeguarding Policy To receive a report on Safeguarding Policy	Community Policy Development Group	26 Mar 2024	Simon Newcombe, Corporate Manager for Public Health,	Cabinet Member for Community & Leisure	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
	Cabinet	4 Jun 2024	Regulation and Housing		
2nd July					
Income Management Policy To receive a review of the MDH Income Management Policy	Homes Policy Development Group Cabinet	11 Jun 2024 2 Jul 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
Town and Parish Charter To receive a report on Town and Parish Charter	Community Policy Development Group Cabinet	23 Jan 2024 30 Jul 2024	Maria De Leburne, District Solicitor and Monitoring Officer	Cabinet Member for Community & Leisure	Open
Income Management Policy To receive a report on	Homes Policy Development Group Cabinet	11 Jun 2024 2 Jul 2024	Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing	Cabinet Member for Housing and Property Services	Open
Service Standards - Tenant Involvement & Empowerment	Homes Policy Development Group	24 Sep 2024	Simon Newcombe, Corporate Manager for Public Health,	Cabinet Member for Housing and Property Services	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
To receive a report on Service Standards - Tenant Involvement & Empowerment	Cabinet	15 Oct 2024	Regulation and Housing		
November					
Economic Strategy 2024 – 2029 To receive a report on Economic Strategy 2024 – 2029	Cabinet Economy Policy Development Group	Not before 1st Nov 2024 Not before 1st Nov 2024	Richard Marsh, Director of Place & Economy	Cabinet Member for Planning and Economic Regeneration	Open
Destination Management Plan for Mid Devon To receive a report on Destination Management Plan for Mid Devon	Economy Policy Development Group Cabinet	Not before 1st Nov 2024 Not before 1st Nov 2024	Richard Marsh, Director of Place & Economy	Cabinet Member for Planning and Economic Regeneration	Open

This page is intentionally left blank

SCRUTINY COMMITTEE WORK PLAN 2024-25

Meeting Date	Agenda Item	Theme	Officer Responsible	Comments
19 February 2024				
19.02.24	Whistleblowing Annual Update To receive details of any Whistleblowing instances in the previous year.		Corporate Manager for People, Governance and Waste	
19.02.24	Establishment Report To Receive a report from the Corporate Manager for People Governance and Waste		Corporate Manager for People, Governance and Waste	
19.02.24	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. Report from the Working Group			
19.02.24	Cabinet Portfolio Presentation		Cabinet Member for the Working Environment	

Meeting Date	Agenda Item	Theme	Officer Responsible	Comments
18 March 2024				
18.03.24	Motion 583 - Protecting Rivers and Seas Report back from Director of Place. Officers from the Environment Agency and South West Water to be invited.		Director of Place	
18.03.24	Devon Home Choice To receive a report from the Corporate Manager for Public Health, Regulation and Housing		Corporate Manager for Public Health, Regulation and Housing	
18.03.24	Cabinet Portfolio Presentation		Cabinet Member for Planning and Economic Generation	
15 April 2024				
15.04.24	Scrutiny Chairman's Annual Report To receive a report from the Chairman of the Scrutiny Committee on the work the Scrutiny Committee has conducted over the last year.			
15.04.24	Cabinet Portfolio Presentation		Cabinet Member for Community and Leisure	
17 June 2024				
17.06.24	Election of Vice Chair			
17.06.24	Start Time of Meetings			
17.06.24	Cabinet Portfolio Presentation		Cabinet Member for Finance	
15 July 2024				
15.07.24	Corporate Mid-Point Review		Chief Executive	

Meeting Date	Agenda Item	Theme	Officer Responsible	Comments
15.07.24	Corporate Performance Report		Corporate Performance and Improvement Manager	
15.07.24	Community Safety Partnership		Corporate Manager for Public Health, Regulation and Housing	
15.07.24	Cabinet Portfolio Presentation			
12 August 2024				
12.08.24	Whistleblowing – 6 month update		Corporate Manager for People, Governance and Waste	
12.08.24	Establishment – 6 month update		Corporate Manager for People, Governance and Waste	
12.08.24	Cabinet Portfolio Presentation			
9 September 2024				
09.09.24	Cabinet Portfolio Presentation			
30 September 2024				
28 October 2024				
28.10.24	Annual Report of Complaints and Compliments		Corporate Manager for Digital Transformation and Customer Engagement	

This page is intentionally left blank

Report for: The Cabinet

Date of Meeting:	6 February 2024
Subject:	Establishment Report
Cabinet Member:	Cllr Jane Lock, Deputy Leader & Cabinet Member for Working Environment
Responsible Officer(s):	Matthew Page, Corporate Manager for People, Governance and Waste and James Hamblin, Operations Manager - Human Resources
Exempt:	N/A
Wards Affected:	All
Enclosures:	A full and updated structure chart will be sent around to all members once the current consultation on CMT structure has been completed.

Section 1 – Summary and Recommendation(s)

To give Members an update on both the Establishment of the Council together with its performance. This report should be read in conjunction with the functions of individual officers highlighted in the Constitution.

This report sits within the current budget and policy framework.

Recommendation(s):

1. The Cabinet is asked to note the information below.

Section 2 – Report

1.0 Introduction/Background

- 1.1 The purpose of this report is to provide an update on the performance of our workforce.
- 1.2 These items include updates on the key establishment indicators of sickness, agency expenditure and turnover.
- 1.3 Focus on data/analysis continues to be at the forefront of our mind as we share and embed this across service areas through initiatives such as the

quarterly performance review report and meeting. Additional monthly updates are provided to the Corporate Management Team and Leadership Team on workforce data. Where possible data and the sharing of this is being automated.

2.0 Sickness Absence, Agency Expenditure and Establishment

2.1 For 2022/23 the Council had an average of 9.9 sickness days per full time equivalent (FTE). This compared to 7.82 days per FTE in 2021/22, 5.58 days per FTE in 2020/21 and 8.10 days per FTE in 2019/20. Figure 1 outlines sickness absence since 2020/21 and includes the first three quarters of 2023/24 which is discussed further in 2.3. Our current policy, expects employees to not exceed 6 days absence in a rolling 12 month period. It should be noted that there will be a difference between FTE and per employee statistics. Lower sickness absence levels during the ‘pandemic years’ will reflect both the furlough scheme in place at the time and employees being able to work from home.

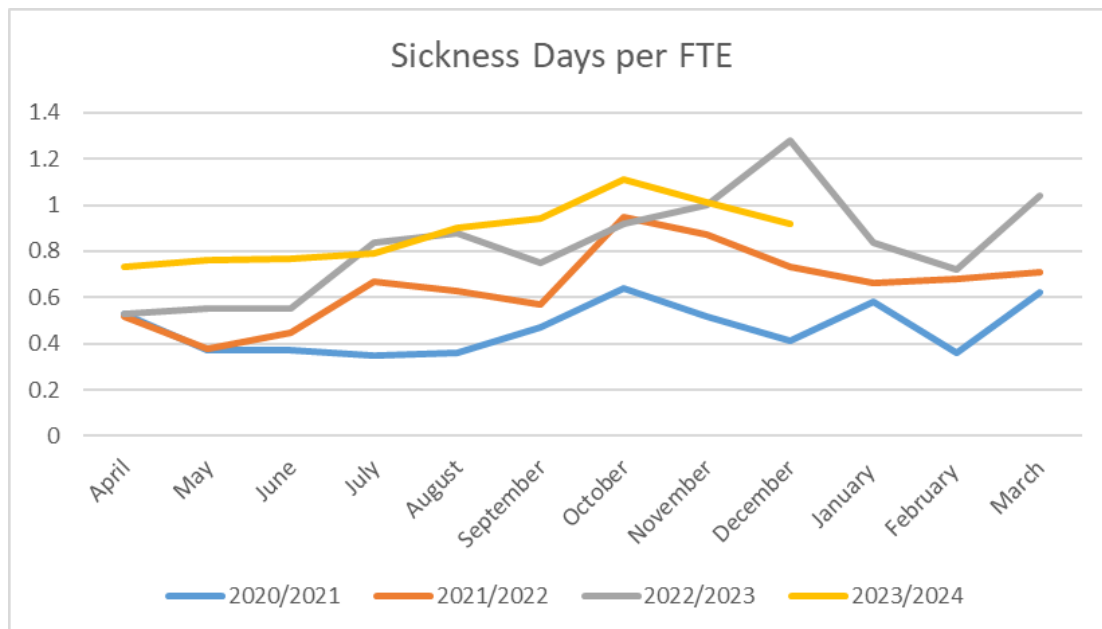


Figure 1. Sickness 2020/2021 – 2023/2024

2.2 Sickness absence and the impacts from the absence remains an ongoing challenge for the Council. Last year saw the launch of the updated sickness absence policy and in house training was rolled out across the organisation. It should be noted that absence levels faced by the Council track closely with national absence trends. Work continues on forming closer relationships with other district authorities in Devon to share learning regarding sickness absence management.

2.3 In the first three quarters of this financial year we recorded 7.93 days sickness absence per FTE. Acknowledging this, projections would suggest we end 2023/24 with approximately 10.57 days lost per FTE. It should be noted that

the last quarter of the year typically sees the highest levels of sickness absence.

- 2.4 One challenge that has been recognised coming out of the pandemic is our inability to accurately classify sickness absence with the phasing out of free COVID-19 tests. Alongside the challenge of accurately classifying sickness, challenges around presentism are recognised particularly with those employees that can work in a hybrid way. To tackle this, continued communication regarding expectations around absence will remain.
- 2.5 Analysing the causes of sickness absence, December 2023 saw the relaunch of our Mental Health Champions at the Council, alongside reiteration of the support available to all employees. This works alongside initiatives such as the heavily discounted Leisure membership to provide greater support for our employees' health and wellbeing. Figure 2 outlines the updated model that has been distributed to employees.

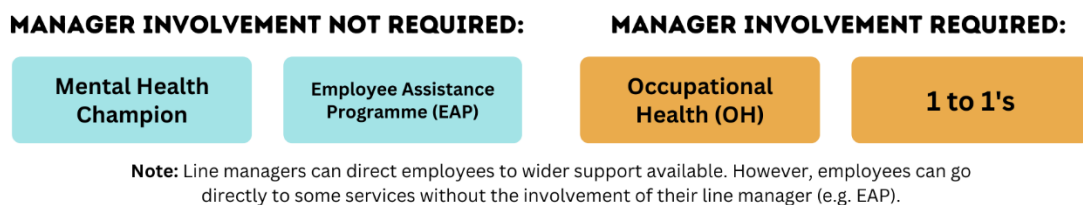


Figure 2. Wellbeing Support at the Council

- 2.6 Autumn 2023 saw increased communication regarding flu vaccination vouchers that were made available free for those under 50 (complementing the national scheme where over 50s receive this at no cost). Reflecting on the initial low uptake, work with a high street provider saw the roll out of two dedicated days for Council employees to attend their Tiverton branch for vaccination. Lessons learnt from this will be rolled into any flu vaccination campaigns for 2024.
- 2.7 In October 2023 the All Staff Survey concluded. This year saw greater efforts made to include those staff without a Council email address. Whilst the completion rate fell within the expected rate of return outlined by our survey provider, it was noted that we saw significantly lower levels of engagement for those without a Council email address. Survey results have been shared with our recognised Union, our Impact Consultative Group and individual services with a draft action plan being shared with the Council's Leadership Team at the end of January 2024. Initial areas of focus include communication between departments, communication of the corporate plan and wider engagement.
- 2.8 The Council continues to keep the benefits offered to staff under review. The updated 'Benefits Overview' continues to be available to existing employees and those looking at the Council as a potential employer. In December 2023

a special recognition session facilitated by our Leadership Team saw those that completed 25 years of service being met with and thanked in person for their service. This is being replicated quarterly in order to mark and celebrate those who achieve 25 years' service (circa 10% of the workforce).

- 2.9 During 2022/23 the Council spent £1,064,794.57 on agency workers. Table 1 outlines agency spend since 2019. In the first three quarters of the new financial year, our agency spend totals £496,714.07. This is approximately a 37% year on year (YOY) reduction and runs in parallel with an increase we have seen in employed FTE which stood at 445.27 at the end of December 2023. Additionally, it should be noted that there is a shift in the recruitment market to workers seeking permanent employment, compared to the recent years where workers have achieved higher rates of pay from employment relationships with less job security (e.g. agency)

Year	Agency Spend	YOY Change (+/-)
2019/20	£534,378.49	
2020/21	£576,368.28	+7.56%
2021/22	£823,288.55	+35.28%
2022/23	£1,064,794.57	+25.58%

Table 1. Agency Spend 2019/20 – 2022/23

- 2.10 As we enter the new budget and financial year, the importance of the Workforce Review Group and regular review of vacant posts remains as valid as ever. This is so we can do our very best to try and ensure that our establishment is as best aligned to our strategic and operational priorities as possible.
- 2.11 Table 2 compares the Establishment for the Council and associated costs from 2019/20 to 2022/23. The 2023/24 Pay Award was awarded in November 2023 following months of negotiations between Union and Employer representatives. Work is underway on the Pay Award for 2024/25 as we continue to see strike action across sectors as highlighted within the media. It is unclear at this stage when an agreement will be reached on the 2024/25 Pay Award (especially with a general election to be held before January 2025).

	2019/20	2020/21	2021/22	2022/23
Total number of employees /workers paid	718	697	728	765
Establishment FTE (Average)	422.11	422.79	426.43	430.44
Total Taxable Gross Pay	£11,170,336.78	£11,515,324.63	£12,197,334.88	£13,168,855.70
Employers NI	£1,024,710.32	£1,038,135.28	£1,126,244.53	£1,277,182.95

Employers Pension	£1,595,839.06	£1,832,713.73	£1,938,973.16	£2,093,547.57
-------------------	---------------	---------------	---------------	---------------

Table 2. Establishment 2019/20 – 2022/23

2.12 The YOY increase between 2021/22 and 2022/23 in ‘Total Taxable Gross Pay’ outlined in Table 2 will reflect the increased FTE, the year’s pay award and the yearly incremental increase. It should be noted that the overall yearly payroll budget includes an aspect of agency staffing costs which can be used to cover hard to recruit areas.

2.13 As we continue efforts to strengthen the calibre of candidates that apply for work at the Council, 2024 will see the roll out of Recruitment and Selection training. The Council will continue to use ‘high foot fall’ areas such as our Leisure sites to advertise roles and the regular recruitment fair held in the Pannier Market. We will also continue to utilise online platforms including LinkedIn, X (formally Twitter) and other forms of social media.

2.14 Training provided will reflect the needs of services. A recent survey has been conducted with Council service leads to understand content which is in demand. Results from the survey will contribute to the development of a new corporate training catalogue available to all employees. These sessions will be delivered virtually and in person and will have broad subject matter to ensure they are applicable to as many employees as possible.

3.0 Turnover

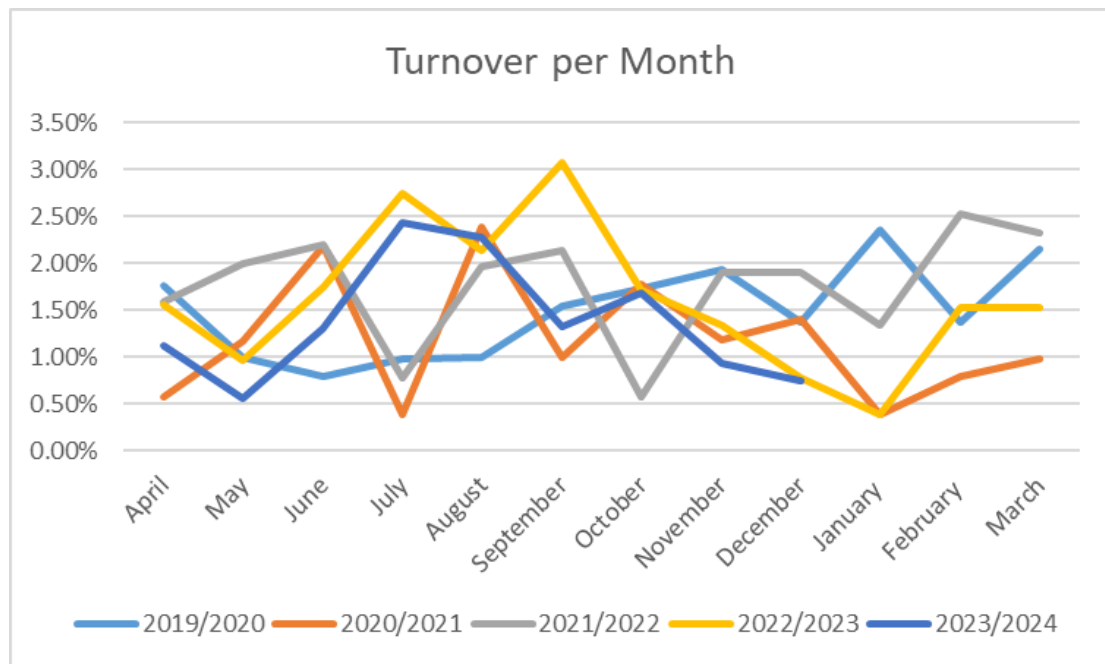
3.1 Turnover for 2022/23 was 19.49%. This compares to a turnover of 2021/22 in 21.25%, 14.23% in 2020/21 and 17.98% in 2019/20. So far in 2023/24, employee turnover is down YOY, Figure 3. Nationally turnover varies from sector to sector, however the rates we are currently seeing are not uncommon within local government, particularly when we acknowledge specific services which we have in house that can suffer with higher than average turnover rates (e.g. Leisure and Street Scene).

3.2 In the first three quarters of 2023/24, staff turnover was 12.37%, down 3.7% YOY. Acknowledging this, projections would suggest we end 2023/24 with approximately 16.49% turnover rate.

3.3 Reflecting upon the exit interview data, ‘Personal/Family Circumstances’ leads as the main reason for leaving, closely followed by ‘Retirement’, ‘Better Salary and Benefits’ and ‘Dissatisfaction with Current Role’. Where possible, insight is shared on the reason for leaving with service leads during the Quarterly Performance Review Meetings to understand areas of improvement that lie within our gift to address.

3.4 Apprenticeships across services support the ‘grow your own talent’ initiative at the Council as we continue to have employed apprentices and upskilling

apprentices. Later this year will see work experience students join the Council's services again. The Council continues to maximise the apprenticeship levy by utilising this for both those joining the Council as an 'apprentice' and those currently employed by the Council but who are



developing further skills/knowledge through training accessed via the levy. The Council has also been an early adopter of T Level placements, with success seen within our ICT department.

Figure 3. Turnover 2019/20 – 2023/24

3.5 Later this year will see the launch of the appraisal process. We will continue to monitor our appraisal process, particularly as some authorities have moved away from this traditional yearly format and adopted an approach which sees regular 121's take place with objective setting still a focal point. A core theme of the appraisal process for this year will be to ensure Council objectives are cascaded down through the organisation. All efforts must be made to improve the appraisal return rate and streamline the process.

3.6 Another important component of the appraisal process will be capturing both individual but also corporate training needs which are vital to supporting the forthcoming priorities of the new administration and subsequent corporate plan.

4.0 Conclusion and Recommendations

4.1 There are a number of priorities which the organisation wishes to focus on in terms of our Establishment performance.

4.2 It is imperative that we continue to review our establishment and staffing budget. This will be an ongoing exercise and should not be seen as a 'one off'

task. The 2023/24 year has seen on average 90% of our budgeted posts held by employed staff with the remaining either being filled with agency staff, contractors or the post becoming an ongoing unfilled vacancy.

- 4.3 Sickness absence needs to continue to be a priority, with the aim of reducing this critical to further improve performance and lower agency costs. We have seen positive outcomes this year in terms of a reduction in turnover and agency spend. However all three core metrics must continue to be at the forefront of our minds, particularly when looking at initiatives to address these.
- 4.4 Learning from the all staff survey should be implemented within an action plan and this must be effectively communicated with staff. It presents a unique opportunity for the Council to clearly show to employees areas of development for the coming 12-24 month period. Alongside clearly communicating the plan, emphasis should be placed on communicating to staff how we are tracking against key deliverables and actions from the plan ahead of the next all staff survey in 2025.
- 4.5 As a result of the above our overarching long term focus remains as: Getting the right people, with the right skills, in the right roles, performing at the right level at the right time.

Financial Implications

Financial risk will only occur where the structure of a service changes without adherence to allocated budgets.

Legal Implications

In accordance with Article 14 of the Constitution.

Risk Assessment

If the Establishment is not appropriately managed and reviewed then service delivery may be put at risk.

Impact on Climate Change

No climate change issues are highlighted in this report.

Equalities Impact Assessment

No equality issues are highlighted in this report. However, one of the areas of focus for the coming year includes working with union and employee representative groups to collate additional data specifically around equality, diversity and inclusion, in order that we can use this to compare our workforce makeup to that of our local community – establishing where we might have under-representation and working to understand the reasons for this.

Relationship to Corporate Plan

This report highlights the Establishment figures and, as such, supports our aim to reduce costs without affecting service quality and continuity.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Agreed by or on behalf of the Section 151

Date: 23 January 2024

Statutory Officer: Maria De Leiburne

Agreed on behalf of the Monitoring Officer

Date: 23 January 2024

Chief Officer: Stephen Walford

Agreed by or on behalf of the Chief Executive/Corporate Director

Date: 23 January 2024

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 22/01/2023

Cabinet member notified: Yes

Report: Exclusion of the press and public from this item of business on the published agenda on the grounds that it involves the likely disclosure of exempt information.

Appendix: Exclusion of the press and public from this item of business on the published agenda on the grounds that it involves the likely disclosure of exempt information.

Section 4 - Contact Details and Background Papers

Contact: Matthew Page, Corporate Manager for People, Governance and Waste (MPage@middevon.gov.uk), James Hamblin, Operations Manager Human Resources (JHamblin@middevon.gov.uk)

Background papers: Previous Establishment Reports taken to both Scrutiny

Update on Motion 564 Inclusion and Diversity

Report to the Scrutiny Committee of the Inclusion and Diversity Working Group, February 2024

1. Background

On 24 February 2021 Motion 564 was passed by Full Council (see Appendix 1) calling upon Council to take action to secure greater participation by under-represented groups including women.

The motion includes a resolution *'That the Scrutiny committee be tasked to consider and make any recommendations to the council regarding the findings of the Fawcett Society/LGIU report: 'Does Local Government Work for Women?'*¹ *The report ... found that structural and cultural barriers hold back women's participation in local government. The practices and protocols of local government create unnecessary barriers to participation particularly for women with caring responsibilities.'*

In March 2022 the LGA-supported Spotlight Review into "How Local Government Works for Women" was produced for Mid Devon District Council's Scrutiny Committee (see Recommendations in Appendix 2. The full report is on the Members Teams website). The review describes Mid Devon District Council as being the "worst for women's representation in the South West". This reflected the District Council results in May 2019, which resulted in only 9 elected members out of 42 being women.² This represented 21.4% of the Council and remained unchanged after the by-elections of May 2021. The national average was 35%.

Since the elections in May 4 2023, much has changed and we are now in a different situation, with 15 of the elected members being women, representing 36% of the Council. However, in more senior roles the proportion of women remains considerably lower, with only two women in the Cabinet.

A review of the situation of women in local government internationally reveals that in many countries (some poorer than the UK) women are incorporated in more equal numbers into local government. The research studies reported show that women's participation and prominence is affected by political systems such as voting methods (proportional systems encouraging greater gender balance), and in some countries, it makes a difference when quotas are used.³

Following Motion 564 and the subsequent LGA-supported Spotlight Review, this motion was added to the new Scrutiny Committee Work Programme. It was unanimously agreed that an updated report should be commissioned from The Scrutiny Committee Inclusion and Diversity Working Group, comprising councillors from across the political spectrum, both male and female.

At its meeting on July 24th 2023 Scrutiny set up the working group, to create a report on Inclusivity and Community Engagement within Mid Devon that would feedback to the Scrutiny Committee in early 2024. Members were Cllr Gill Westcott (Convenor, Green Party), Cllr Polly Colthorpe (Conservative) and Cllr Lance Kennedy (Liberal Democrat). Cllr Kennedy was later substituted by Cllr Gordon Czapiewski. The group has attended to inclusion not only in relation to women but to other potentially disadvantaged groups, reflecting the wording of the original motion, in which the Council affirms 'its role in helping to create an equal and inclusive society for all, and recognises that sexism, racism, bigotry, discrimination, intolerance and bad behaviours in any form play no part in this'. It intends that this wider concern will inform its continued work.

¹ [Does Local Government Work for Women? - Final Report of the Local Government Commission | The Fawcett Society](#)

² 'Does Local Government Work for Women' – A Spotlight Review by Members of the MDDC Scrutiny Committee, March 2022. To be circulated.

³ 'Women in Local Government: International research and analysis', Sophia Gilmour. The review can be read on the Members' Teams site in a folder named Scrutiny Committee Inclusion and Diversity Report.

The working group has conferred with the Equalities Champion, Councillor Jane Lock, who has attended some of our meetings and with the Equality Diversity and Inclusion Group (formerly the Equalities Forum) convened by Stephen Carr.

It should be noted that before District Council Elections, Mid Devon District Council already provided both in person and online sessions describing the role of councillors to encourage new candidates to stand for Councillor roles. This practice should be continued and built upon.

It should also be noted that at the start of each municipal year, every Committee, Policy Development Group and Cabinet agree the timing of their meetings. These have been revised to meet the requirements of the current Councillors. This process should be reviewed at each scheduling opportunity.

2. Role of the Equalities Diversity and Inclusion (EDI) Group

We have held discussions with the EDI group and the Equalities Champion (who has attended one of our meetings) about our respective roles. Both have a wide brief. The EDI group, convened by Stephen Carr, is concerned with EDI matters for MDDC as a whole and the Mid Devon Community, particularly in regard to their access to council services and processes. The EDI group acts under the Equalities Act 2010 fulfilling the requirement on councils to prevent discrimination in relation to protected characteristics, set appropriate objectives and to produce an Equality Action Plan which is reviewed at least every four years. The current objectives are:

1. Meeting the needs of an aging population.
2. Overcoming the problems faced by vulnerable individuals caused by rural isolation.
3. Overcoming the effects of multiple disadvantage in families with complex needs.
4. To continue to concentrate on mental health issues within MDDC and the wider community.
5. Secure decent digital connectivity for all of Mid Devon (Corporate Plan aim)

Recent work has included publishing accessibility information, drafting the Single Equality Scheme, work with Devon County Council's Equality team, producing an Equalities Impact Assessment tool for projects and changes in procedures and policies, and conducting Equalities monitoring. Our own Inclusion and Diversity Working Group is in a position to facilitate some of the necessary investigation and facilitation in relation to councillors, and the group felt this was our best contribution to the ongoing work.

3. Training needs

Our discussions suggest that councillors could benefit from further training for Inclusion and Diversity. We suggest:

4.1 Training for all councillors in Protected Characteristics, what they are and our obligations in relation to them. This could be provided in house or as web based training. Democratic Services could suggest how this is sourced and provided.

4.2 We recommend that all Chairs and Vice Chairs receive training in Inclusive Practices, enabling all voices to be heard. The term Inclusive would include women as well as any other individuals or groups who may not currently be well represented or their needs voiced. Preferably this should be

delivered by external trainers, such as those who provided the Ice Breakers at the start of the present administration. It should include participative exercises and scenarios. Pre-course reading/online training could be used to reduce the face to face time involved but for best use of time this would need to be confirmed as having been completed prior to the face to face training commencing. We would suggest that this training could be delivered to Elected Members and Officers in the same sessions, though this decision would lie with Democratic Services. Following the assessment of training completed by Members, which is currently under way, we hope that a suitable external agency can be commissioned to offer this training.

4. Encouraging diverse council candidates

In advance of the last local government elections, in May 2022 MDDC laid on a public session on the role of Councillors, in accordance with point 2 of the Motion and Recommendation 1 of the Spotlight Review. This session was reported to be helpful and welcome by current members some of whom had attended. We understand that an online session was also provided, but that some, inevitably were unaware of this opportunity. Councillors could help to advertise such a session before the next local elections, which might encourage those at greater distances from Tiverton or with home-based responsibilities to attend.

There is obviously a tension between encouraging diversity of candidates, and the recognition that by virtue of those very circumstances which cause some groups to be under-represented, they will also experience difficulties in fulfilling their role if they are elected. There is a balance to be struck. Nevertheless this council has moved in a positive direction to shift the balance towards greater inclusivity. We have chosen timings for meetings to allow those with regular employment commitments to attend, and the care allowances available help those with caring responsibilities to attend council business. We are glad that people of working age and with caring responsibilities are represented on our authority and hope that further measures can help to increase the diversity of participation in our democratic life.

5. Consulting all members

The working group came to the conclusion that there is no one-size-fits-all to maximise inclusion. For example while evening meetings allow those with 9 – 5 employment commitments to attend, they may be more difficult for parents than meetings during school hours or require a sacrifice of family time. Retired members also sometimes find daytime meetings suit them better. There is also a disruptive effect on officers from the increase in evening meetings.

We would like to provide an opportunity for all members to contribute their views on this and other ways in which we can reduce obstacles to inclusion, and therefore propose that the Working Group, with help from officers, conduct a survey of members on these issues, the results to be collated anonymously and brought back to Scrutiny Committee for discussion.

6. Conversations with women and carers

The Spotlight Review highlighted the value of peer mentoring, 'networking sessions or a women's forum to support female members'. Recommendation 5 is 'that the Council supports and facilitates the building of councillor networks, in particular between women councillors and councillors with families or caring responsibilities to grow peer-to-peer support'. The working group aims to provide an opportunity, initially for informal conversation, with both these groups to allow for sharing of views and to see whether further initiatives are suggested. Initial suggestions for a conversation with women councillors has proved controversial but a number of women members have confirmed their interest. As with survey results, any suggestions would be brought back to Scrutiny Committee for discussion.

7. Conclusion

We are encouraged by the steps which have already been taken within MDDC to maximise inclusion, encourage diversity, and to ensure that members with differing situations can participate in council business. We acknowledge that this is work in progress, but that members have told us that they appreciate the respectful and co-operative working relationships with each other and officers. To continue this work should not be taken as a criticism of Mid Devon District Council but a reflection of a worthwhile commitment to ensure that all voices are heard and that, as far as possible, obstacles to members making their full contribution are removed or mitigated. We are grateful for the work of the Equality Diversity and Inclusion Group (formerly the Equality Forum), particularly on accessibility and Equalities Assessment. We know that the Communities PDG is also advancing equality in our communities. The potential is for Mid Devon to exemplify good practice on all these fronts. We depend both on our members' commitment and our communities' willingness to interact with us to help us to achieve the best we can for them.

8. Recommendations

We recommend that

- Democratic Services arrange in house training for all Councillors in protected characteristics
- In addition to the existing training for chairs and vice chairs, they should receive interactive training in inclusive practices. Following the assessment of current training completed by Members currently under way, Democratic Services are requested to source and commission a suitable external agency to offer this training to councillors and officers.
- The working group should work with Democratic Services to conduct a survey of all councillors on their views on increasing inclusion and diversity, and any preferences about timing of meetings.
- Further conversation should take place on how best to mitigate obstacles for women, people with caring responsibilities and other defined groups in becoming Councillors and in fulfilment of their role.

Appendix 1

Motion 564, passed February 2021

This Council affirms its role in helping to create an equal and inclusive society for all, and recognises that sexism, racism, bigotry, discrimination, intolerance and bad behaviours in any form play no part in this. This Council also acknowledges that language is a powerful tool for change, inclusion and inspiration, as well as a cause of ignorance and damaged relationships -- it should be used thoughtfully and respectfully, and language and behaviour should be challenged where it is not respectful or conducive to good outcomes for the Council and its residents. In order that the Council can play its part locally in building a more understanding and inclusive society, it resolves:

1. To review all our relevant policies and conventions, and identify any additional Member and Officer training needs, so as to actively promote diversity, engagement and inclusivity.

2. That the Equality Forum and Community Policy Development Group be tasked with exploring opportunities to increase inclusivity, engagement and representation at Mid Devon District Council, including by identifying hard to reach or underrepresented communities, and considering how best to engage with them.

3. To review and update the MDDC equalities policy and create a diversity and inclusion strategy, seeking input from residents and local organisations that have expertise where necessary, so as to ensure the council is more socially inclusive in its recruitment, member representation and service provision.

4. That the Scrutiny committee be tasked to consider and make any recommendations to the council regarding the findings of the Fawcett Society/LGiU report 'Does Local Government Work for Women?' (see footnote 1).

(1) The Fawcett Society and Local Government Information Unit report, 'Does Local Government Work for Women?' found that structural and cultural barriers hold back women's participation in local government. The practices and protocols of local government create unnecessary barriers to participation particularly for women with caring responsibilities.

<https://www.fawcettsociety.org.uk/does-local-governmentwork-for-women-final-report-of-the-local-government-commission> Council⁴

Appendix 2 Recommendations from Spotlight Review

'Does Local Government Work for Women'

Spotlight Review by Members of the Mid Devon District Council Scrutiny Committee

Recommendations

1. That the Council considers ways to better promote the role of a Councillor.

Rationale: Reflecting the local population is vital in helping councils run efficiently and for communities to thrive. It brings in the knowledge and lived experience of the needs and aspirations of everyone in the local community. Many residents and members of the public, however, often do not clearly understand the role of a Councillor and the impact that role can have in the community. There is also often a lack of knowledge about the expenses available and the time needed to give to the role. A better understanding of the role and its benefits may help encourage more people to stand for election.

The Council should give thought as to how to clearly communicate to a wide range of people in the District. This could be through events or workshops to help demystify the process and the role, and in doing so encourage more women to stand. Outreach is about looking in different places and in all communities for untapped talent and proactively reaching out – going to where people are and building a meaningful and holistic relationship across the Council with groups, networks and communities.

⁴ The original reference is ineffective. The report can be found here [Does Local Government Work for Women? - Final Report of the Local Government Commission | The Fawcett Society](https://www.fawcettsociety.org.uk/does-local-governmentwork-for-women-final-report-of-the-local-government-commission)

For example, the Council could: work with schools to increase the pipeline and interest locally; engage with local stakeholders and organisations that may not necessarily work closely with the Council; work with other Local Authorities to create shared materials and knowledge (for example Devon County Council has materials aimed at encouraging a diverse range of people to stand); pull together profiles on members from under-represented groups or from different backgrounds; and work with the LGA on sourcing peer members to speak at events.

2. That all Chairs of Committees and PDGs are required to attend formal training.

Rationale: The group has had first-hand experience, and have heard from colleagues, about issues to do with behaviour and conduct in meetings. One way to tackle these issues is for the Chair of that meeting to address it immediately. Good Chairs of meetings should create a collaborative and respectful space that supports good discussion and decision-making. Chairs should encourage other members to do the same. All Chairs of Committees and PDGs should therefore clearly understand, and receive training on, how to deal with unacceptable behaviour/conduct in a meeting. Political Group Leaders should require members that hold Chair positions to attend, and consideration should be given to whether to enforce this as a requirement through the constitution.

3. That a councillor is identified to be the equalities and accessibility champion.

Rationale: A recommendation in the 2017 Fawcett Society report is that a member should be identified to promote equality within each council. The Fawcett Society report details evidence of a macho, combative culture in council chambers which can silence or appropriate women's voices. The review group has also had similar experiences and therefore felt that identifying an equalities and accessibility champion would be useful to look into these kinds of issues within the Council. This role could cover all aspects of equalities and accessibility, including supporting the needs of groups that are defined by the nine "Protected Characteristics" in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation). The champion could also take forward and drive the work of the Equality Forum (including promoting its presence and role within the Council and externally), have a role in organising the gender equality networks as detailed in recommendation 5 and carry out the research as detailed in recommendation 8.

4. That the Council develops a mentoring scheme for (new) members of the Council.

Rationale: Both the Fawcett Society report, and the LGA toolkit 'Enabling and Supporting Women, Parents and Carers to Stand and Serve in Local Government', encourages councils to review their current induction programme to ensure effective support is in place for new members. They recommend including an active sponsorship scheme or mentoring programme for all new councillors, as well as ensuring parents/carers and female councillors in particular feel supported. The Council should introduce a mentoring scheme, and draw up a list of members willing to be mentors and a list of members with necessary skills that new members could use as

a knowledge source. There could also be monthly group coaching for members, networking sessions or a women's forum to support female members.

5. That the Council supports and facilitates the building of councillor networks, in particular between women councillors and councillors with families or caring responsibilities to grow peer to peer support.

Rationale: Both the 2017 Fawcett Society report and the LGA toolkit recommend introducing gender equality networks and evidence shows they can enable increased solidarity between women, which can in turn lead to increased confidence and progression. Feedback from the meeting with female members was that, given the impact of covid, members would also welcome the opportunity to engage with other members outside of Committee meetings. Within MDDC, these networks could extend across the whole organisation, offering shared leadership and development opportunities by bringing councillors and officers together, or by focussing networks for parents/carers. These confidential sessions could be organised and driven by the member identified as the equalities champion.

6. That the Council develops a (password protected) private members area on the Council website, in order to create a bank of shared training materials and documents for reference and ongoing learning.

Rationale: The group recognise that members often differ in the amount of time they are able to give to the role, particularly if members have full time employment. As such, some members find it hard to attend informal meetings, briefings and training opportunities. The group wanted to ensure that these members are supported in other ways to access the information given at these meetings. The group therefore recommends that a password protected, private member area be developed on the Council website. This area could be a depository for presentations and material given at briefings; guidance; training materials; and other useful documents. This could also potentially be a place to log attendance at training to encourage members to attend.

7. That the Council ensures all officer roles are offered flexibly (unless there is a business need) and give consideration to the option and promotion of job shares for officers.

Rationale: The 2017 Fawcett Society report recommends that local authorities offer all officer roles, including senior roles, as flexible working and part-time by default, unless there is a clear business case otherwise. This must be backed up by a genuine commitment to viewing flexible working for officers on equal terms with traditional working patterns. Whilst most officer roles within MDDC are now offered on a flexible basis, the Council should also give consideration to the option and promotion of job shares for officers (as long as achievable in line with the needs of the business). Job shares can assist recruitment by attracting qualified employees who do not want to work full-time, and can help improve retention given the flexibility they offer.

8. That further research is carried out into member experience of equality in the Council.

Rationale: The group heard that there is potential for the Equalities Forum to be more ambitious and do more, if members were more engaged. The Equalities Forum should consider how to proactively engage members on their experiences and gather feedback, perhaps working with the LGA on this. Research could also consider the impact that covid has had on member experiences within the Council. The member identified as champion for equalities could lead and drive this research.

Actions we call for

1. Leadership from the top of the political group is important. Group Leaders should be clear on their role regarding member development and conduct and actively encourage members to attend training and briefings.

Rationale: There is a role for Political Group Leaders with regards to member conduct, and the group heard how some Leaders deal with conduct issues. The group would like to see Political Group Leaders actively encouraging members to attend training and briefings, and also requiring their members that are Chairs to attend training on how to chair and deal with conduct which does not favour inclusion in meetings.

2. Political parties should work with the LGA political officers to understand best practice and what actions can be taken to encourage a diverse range of candidates to stand.

Rationale: The LGA have political group officers who can provide various support to Political Group Leaders, including working with political parties to help think through how to encourage a broad range of candidates to stand.

Diversity Questionnaire

For all MDDC Elected Members

1. For yourself, were there any disadvantages or problems involved in standing as a candidate or in potentially being elected which you had to face when you stood for election? If so please note them below.

Enter your answer

2. If relevant, what helped you to overcome or dismiss these considerations?

Enter your answer

3. Are there others you know of who would have made good councillors but were unwilling to stand for election?

Yes

No

4. If yes, what factors do you think deterred them?

Enter your answer

5. . Some meetings have been moved to 5:30 or 6:00 p.m., to meet the needs of those in employment to achieve greater inclusion in council business. However, it is also likely that no single meeting time will be ideal for all councillors. To achieve the best compromise, it will be helpful to have the following information:

What times of day can meetings generally be scheduled which are easy for you to attend **in person**? What times of day would make it difficult for you to attend in person?

	No problem	Not ideal but possible	Not pc
Morning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Afternoon	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Early evening	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Late evening	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

6. If the question were "what times could you attend online?" how would this be different? Please consider the question again but from the point of view of online attendance, (setting aside for the moment, the consideration that one cannot vote when attending online).

	No problem	Not ideal but possible	Not pc
Morning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Afternoon	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Early evening	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Evening	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Does the distance you have to travel and the time spent travelling have any impact on your ability to attend meetings in person?

Yes

No

8. How far do you have to travel to meetings at Phoenix House, one way?

Less than 1 mile

1- 5 miles

6 -10 miles

11-15 miles

Over 15 miles

9. How long does your one way journey take?

Less than 15 minutes

16 - 30 minutes

31- 45 minutes

Over 45 minutes

10. How do you usually travel to Phoenix House

Walk

Bicycle

Motorbike

Bus

Car

11. Do you have any comments on the timing of meetings?

Enter your answer

12. In full council meetings, or in committee meetings, the frequency of interventions by different councillors varies greatly.

	Yes	Not always	Less than others
Do you feel able and confident to make salient points whenever you wish?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do you feel listened to when you do?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

13. About your present experience of being a councillor

	Yes	No
Has it been rewarding?	<input type="radio"/>	<input type="radio"/>
Have you felt able to accomplish at least some of your aims?	<input type="radio"/>	<input type="radio"/>
Regardless of your actual intentions, has it encouraged you to stand again?	<input type="radio"/>	<input type="radio"/>

14. Please comment briefly, or extensively if you wish, about your time as a councillor.

Enter your answer

15. If you have experienced difficulty in fulfilling your role as a councillor (including any chairing or cabinet role you occupy), please say whether any further training for yourself or others, or any other changes in process, would have enabled you to be more effective in your role.

Enter your answer

16. What is your age?

- Under 35
- 35-44
- 45-54
- 55-64
- 65+
- Prefer not to say

17. What is your gender

- Female
- Male
- Non-binary
- Prefer not to say

18. Do you have children at home for whom you are a carer? If yes please give their ages.

Enter your answer

19. If the answer is yes, Do you regularly share the care of these children with another family member (e.g. spouse, partner, grandparents, other)?

- Yes
- No
- Sometimes

N/A

20. Are there any adults in need of daily assistance for their living requirements for whom you are a carer?

Yes

No

21. Are you in employment? Exclude elected councillor role.

	Yes	No
Full time	<input type="radio"/>	<input type="radio"/>
Part time	<input type="radio"/>	<input type="radio"/>
If Yes to either of the above are your working hours flexible?	<input type="radio"/>	<input type="radio"/>

22. Do you have any further comments regarding employment?

Enter your answer



This content is created by the owner of the form. The data you submit will be sent to the form owner. Microsoft is not responsible for the privacy or security practices of its customers, including those of this form owner. Never give out your password.

Microsoft Forms | AI-Powered surveys, quizzes and polls [Create my own form](#)

The owner of this form has not provided a privacy statement as to how they will use your response data. Do not provide personal or sensitive information. | [Terms of use](#)



Report for: Scrutiny

Date of Meeting:	19 th February 2024
Subject:	Planning Enforcement Policy update
Cabinet Member:	Cllr Steven Keable, Cabinet Member for Planning and Economic Regeneration
Responsible Officer:	Angharad Williams, DM Manager
Exempt:	N/A
Wards Affected:	Relevant to all wards
Enclosures:	Revised Planning Enforcement Policy

Section 1 – Summary and Recommendation(s)

This report seeks to:

1. Discuss the reasons why an updated policy on Planning Enforcement is needed, and;
2. Present the updated Planning Enforcement Policy which incorporates amendments requested by the Planning Policy Advisory Group (PPAG) ahead of presentation to Cabinet for adoption.

Recommendation(s):

1. That Members note the report and the updated planning enforcement policy – including that PPAG have recommended the presentation of the updated planning enforcement policy to Cabinet for approval. And;
2. That Members note that delegated authority to the Development Management Manager, in conjunction with the Cabinet Member for Planning and Economic Regeneration, will be sought to make any future revisions to the Planning Enforcement Policy to ensure it accords with National Planning Policy.

Section 2 – Report

- 1.0 Introduction – background to Planning Enforcement Policy

- 1.1 Mid Devon's Local Planning Enforcement Policy seeks to set out how Mid Devon will take responsibility for reported breaches of planning control within the District. It sets out how reported breaches will be categorised by means of Highest priority, high priority, medium priority, and low priority, together with the timescales that can be expected with each in terms of acknowledgement, investigation and response time.
 - 1.2 The policy was last reviewed in April 2018. Since then, as members will be aware, there have been a number of National and Local Policy changes, together with a steady rise in reported planning breaches since the Covid pandemic.
 - 1.3 Planning enforcement is an important part of planning activity and the planning system, however planning enforcement is governed by legislation, is discretionary and must be proportionate.
 - 1.4 A high volume of planning breaches are reported, but the majority tend to be low impact/risk and, owing to the limited resource available, officers necessarily have to focus on the high risk/high impact cases where intervention is required to address serious breaches.
 - 1.5 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.
 - 1.6 At Mid Devon, it has been considered appropriate and prudent to update the current Planning Enforcement Policy in order to provide clarity on officer approach when dealing with reported breaches. The aim of the policy, is to set out clearly what will be investigated as a high priority, as well as make it clear that lower priority cases will not be investigated whilst other higher priority matters are being dealt with, unless there is planning officer capacity to do so.
 - 1.7 The approach to enforcement 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.
- 2.0 Proposed Changes in detail
- 2.1 The new Planning Enforcement Policy brings the operations of the Enforcement Team in line with the Council's current approach, formal

adoption and publication of the policy should make it easier for the public to understand Mid Devon's approach to Planning Enforcement.

- 2.2 The proposed Planning Enforcement Policy adopts a similar approach to that taken by East Devon. The reason for this is that Officers consider it to be a robust policy and it was also considered to be a good template by the Scrutiny Sub Committee which was previously formed to consider planning enforcement activity within Mid Devon.
 - 2.3 The proposed policy sets a much clearer framework for when enforcement action will be taken, and how it will be taken, together with clarity on what types of cases will be investigated as high priority, medium priority and lower priority, accordingly.
 - 2.4 It advises that a maximum of 7 working days is the response time for acknowledgement of complaints received and sets out step by step guidance on how the complaint will be managed and what to expect as an outcome. The updated policy is more comprehensive and will enable improved management of the enforcement caseload.
 - 2.5 Options regarding enforcement action, explaining what is appropriate and when, together with some examples of what will and will not constitute a breach of planning have also been included within the policy.
 - 2.6 The proposed document is simple in comparison with the current policy document, in an attempt to help a wider audience to understand how a case is investigated and what options are available to enforcement officers in terms of taking action as set out by National Policy. This includes specific guidance in relation to what are normally higher priority cases, such as protection of trees, and listed buildings.
 - 2.7 The updated Planning Enforcement Policy has been appended to this report for ease of reading, and reference.
- 3.0 Next steps
- 3.1 As set out above; the Council is seeking to implement this updated policy as soon as possible, in order that the public are better informed of how the Council will manage reported breaches of planning control.
 - 3.2 The policy has gone before PPAG, incorporates changes recommended by PPAG and is now before Scrutiny to ensure that members have the ability to discuss the changes, and ask any questions, before the report and the policy proceed to Cabinet for approval to adopt.

Financial Implications

Planning enforcement is a discretionary and non-fee generating service. Ensuring that the Council's policy on enforcement is clear, understandable, and in line with National Planning Policy, is crucial in minimising the risk of enforcement appeals that could come forward with a cost implication to the Council as a result of unreasonable enforcement action.

Furthermore, the implementation of the updated policy into the Council's policies and procedures will help to ensure caseloads for officers are manageable and their wellbeing maintained. This is because the policy makes it clear what reported breaches of planning will be prioritised and those that will either take longer to be investigated, or will not be investigated until or unless capacity exists.

Legal Implications

Matters of enforcement are bound by strict data protection rules and the authority must be mindful of the rights of individuals concerned. This means that specific details and ongoing enforcement activity cannot be shared beyond those within the authority who are immediately and necessarily involved in cases.

Enforcement action must always be proportionate and, where appropriate, the LPA is encouraged to seek to resolve matters through dialogue and regularisation. The authority does not have 'carte blanche' in what it elects to do in relation to planning enforcement matters.

Nonetheless, enforcement is a necessary part of the planning system and so, in relation to severe planning breaches, the authority will seek to progress proactive enforcement.

Risk Assessment

Risk can arise through a lack of enforcement activity – but the authority is seeking to mitigate this risk as explained within this report.

Risk can also accrue from unreasonable enforcement activity and a lack of general compliance on key issues such as data protection. The authority are also therefore seeking to minimise this risk by implementing the policy update which is considered to provide more clarity around what cases will be high priority and how enforcement action will be taken as appropriate. This subsequently assists in minimising risk of turnover of employed enforcement officers, given that their caseload should be more manageable.

Impact on Climate Change

Owing to the direct impact that planning has upon our built and natural environment, work in relation to planning enforcement can have an impact upon climate change, biodiversity and the environment at large. Generally speaking, planning enforcement should always have a positive impact in these areas as it seeks to ensure compliance with planning matters and seeks to guard against illegal or improper development and use of land.

Equalities Impact Assessment

No equalities issues are expected to arise from this report.

Relationship to Corporate Plan

Proactive and proportionate planning enforcement will support the Council in achieving its corporate objectives.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Date: 9 February 2024

Chief Officer: Richard Marsh

Date: 28th January 2024

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 9 February 2024

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Angharad Williams – DM Manager

Email: awilliams@middevon.gov.uk

Background papers: None.



Local Enforcement Plan Mid Devon District Council 2024

Contact details

Mid Devon District Council Website – ([Residents - MIDDEVON.GOV.UK](https://www.middevon.gov.uk))

Contents

1. INTRODUCTION	2
2. SERVICE AIMS	3
3. PLANNING ENFORCEMENT AND WHAT IS A BREACH OF CONTROL ..	4
4. MAKING A COMPLAINT.....	5
5. THE ASSESSMENT AND DECISION MAKING PROCESS	7
6. TAKING ENFORCEMENT ACTION.....	10
7. AUTHORISATION OF ACTION	11
8. ENFORCEMENT PROCESS FLOW CHART.....	12
9. PLANNING ENFORCEMENT POWERS AVAILABLE	13
10. TREES.....	21
11. LISTED BUILDINGS	24
12. BREACHES OF SECTION 106 LEGAL AGREEMENTS.....	27

1. INTRODUCTION

- 1.1 The National Planning Policy Framework (NPPF) states the following recommending that local planning authorities publish a local enforcement plan:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

- 1.2 This Local Enforcement Plan sets out Mid Devon District Council’s priorities for investigation, explains what will be investigated and it outlines the Council’s general discretionary powers with regard to planning enforcement. This document sets out the policy and procedures that the Council will adopt when investigating and, where applicable, remedying breaches of planning control.
- 1.3 This document sits below, and should be read in conjunction with, the Council’s Regulatory Enforcement and Protection Policy which sets out the general principles the Council will follow in relation to investigations, enforcements and prosecutions as part of its regulatory functions. Further advice and guidance is also available within the National Planning Practice Guidance published by the Government.
- 1.4 Mid Devon District Council recognise that unauthorised development can have adverse consequences and, if unchecked, can undermine confidence in the planning system. The Council is, therefore, committed to the effective enforcement of planning control.
- 1.5 Planning enforcement can be a complex and involved process with varying timescales. The aim of this strategy is to ensure the Planning Enforcement Service:
- Has a decision making process that is open, transparent and is seen to be fair and balanced;
 - Provides an excellent service to those who live and work in and visit Mid Devon;
 - Is accessible to all users, keeping all interested parties updated;
 - Takes action, where appropriate, that is timely, proportionate and reasonable;
 - Achieves and maintains effective and efficient enforcement of planning control.

2. SERVICE AIMS

2.1 The Council's Service Aims with regard to Planning Enforcement are:

1. To operate in accordance with the procedures outlined in this Plan and the overarching Regulatory Enforcement Policy published by the Council;
2. To remedy harm caused by breaches of planning control in the interests of protecting and enhancing the built and natural environment of Mid Devon and the amenity of its residents and visitors;
3. To strike a balance between protecting public safety, amenity and other important interests and enabling acceptable development to take place, even though it may initially have been unauthorised;
4. To ensure that the policies and the credibility of the Council and the planning system is not undermined;
5. To carry out all enforcement duties openly, fairly, helpfully, proportionately and consistently and to consider each case on its own facts and merits;
6. To maintain the confidentiality of complainants.
7. To investigate all reasonable complaints where complainant details are provided;
8. Complaints will be prioritised according to their urgency and potential harm;
9. Enforcement action will be taken where it is expedient to remedy harmful consequences and when it is in the wider public interest;
10. Ensure that any formal action is proportionate to the breach.

3. PLANNING ENFORCEMENT AND WHAT IS A BREACH OF CONTROL

- 3.1 The enforcement of planning law is complicated. This is because central government attempts to balance the rights of individuals to use or alter their property against the need to safeguard the character and quality of towns/villages/the countryside, amenity of people and an area, and to uphold the planning policies of the district.
- 3.2 The planning enforcement system generally gives the benefit of the doubt to anyone undertaking the unauthorised development, and Council's are expected to give those responsible for undertaking unauthorised development an opportunity to correct matters before taking formal action.
- 3.3 If the Council's actions are considered too onerous or legally incorrect, it can be awarded costs against it and/or have its decisions overturned at appeal or by the courts. Maladministration can also be found against the Council by the Local Government Ombudsman if the Council fails to take effective enforcement action when it was plainly necessary, or takes action when it shouldn't. Such a decision can also lead to the payment of compensation by the Council to a complainant.
- 3.4 The Council's power to take enforcement action comes from Parliament under the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning and Compensation Act 1992, Town and Country Planning (Control of Advertisements) Regulations 2007, Anti-Social Behaviour Act 2007 and the Localism Act 2011. There are also powers in relation to the Community Infrastructure Levy under the Community Infrastructure Levy Regulations 2010 (as amended).
- 3.5 For a breach of planning control to have occurred, it must first be established that development requiring planning permission has taken place. Development is a legal term and generally means building works and/or some changes of use. Building works can include the construction of a building, excavations, extension, although small-scale extensions to houses may not need planning permission. Changes of use can include a change from a shop or office to a dwelling, although some changes of use do not require planning permission.
- 3.6 Not all development requires planning permission and the main sources of guidance on this are:
- The Town and Country Planning (General Permitted Development) Order (as amended);
 - The Town and Country Planning (Use Classes) Order (as amended); and
 - The Town and Country Planning (Control of Advertisements) Regulations (as amended).
- 3.7 These documents, which can be viewed on the Government's website, detail instances where permission is not required. For example, certain structures do not need permission because of their size, height or location etc. This is called 'permitted development' and specific guidelines are given in the General Permitted Development Order (the GPDO). The Use Classes Order places most types of use into classes (e.g. retail, business, etc.) and, in general, permission is required to change from one class to another. The Control of Advertisements Regulations set out what forms of advertising do not require consent,

known as “Deemed Consent” and what does, known as “Express Consent”. Further information on this is also available at www.planningportal.co.uk

4. MAKING A COMPLAINT

4.1 Most investigations into breaches of planning control result from complaints from the public, Councilors or Parish Councils, but the Council will act pro-actively where a significant breach of planning control is apparent even if no complaint has been received. All investigations will follow the same general procedure as set out below. Complaints can be made on-line, via the website, ‘report a breach’.

4.2 The Planning Enforcement service will not normally take the lead in investigating possible breaches of planning control that occur on Council-owned land or on highway land. The appropriate Council service or the Highway Authority (Devon County Council) will have stronger powers to remedy such breaches.

4.3 When the complaint is received:

It will be acknowledged within 7 working days.

- Complainant’s identities will be kept confidential, unless they are asked to collect and submit evidence to help secure a prosecution in which case their identity and evidence will subsequently be made public.
- Anonymous complaints will not normally be investigated unless they allege serious breaches of planning control.
- Action on complaints will be prioritised (see 4.4 below).

Complaint Priorities

4.4 Complaints will be prioritised in accordance with the following categories:

1. High Priority Complaints – Requiring Immediate Investigation

- Development resulting in concerns for public health and safety which are controllable through planning legislation.
- Works of demolition, significant alteration or extension causing substantial harm to, or total loss of, a heritage asset.
- Works to protected trees (either those covered by a Tree Preservation Order or those within a conservation area), important hedgerows and non-compliance with tree protection conditions where there is a likelihood of substantial harm to significant trees and hedgerows.
- Demolition of important unlisted buildings/heritage assets in conservation areas.
- Development that may adversely affect or destroy a site of nature conservation value.
- Development that has a significant impact on the natural environment.
- Significant unauthorised building works/structures.

- Uses of land or buildings or activities that cause significant disruption by reason of noise, smell, fumes or other forms of nuisance.

2. Medium Priority Complaints – Investigation to commence and complainant to be informed of progress.

- Operational and building works not covered under high priority . above.
- Changes of use resulting in harm to residential amenity or the immediate environment.
- Non-compliance with conditions/planning obligations resulting in harm to residential amenity or where there is less likelihood of substantial harm to significant trees and hedgerows.
- New build and other works within conservation areas not covered under high priority above.
- Where immunity from enforcement action due to the passage of time will come into effect shortly.
- Untidy land – depending on severity
- Other works causing less than substantial, or no, harm to the significance of a heritage asset.

3. Low Priority Complaints that will not be investigated while other urgent complaints are under investigation.

- Other changes of use.
- Other minor building works and structures e.g. garden sheds, walls, fences etc.
- Non-Compliance with other conditions.
- Advertisements.
- Satellite dishes.

5. THE ASSESSMENT AND DECISION MAKING PROCESS

Initial action

- 5.1 The investigation will be carried out by a Planning Enforcement Officer or a Planning Officer, as considered appropriate with regards to the type of breach alleged. A Planning Officer will have greater knowledge of the site and breach if it relates to a planning permission not built in accordance with plans or where a planning condition has not been complied with.
- 5.2 Following receipt of a complaint, or following monitoring of a development by the Council, the matter will be screened to see if a breach of planning control may have occurred. This will be a desktop investigation to check, for example, planning history, other records and relevant legislation. If it is established at this stage that there is no breach the Complainant will be advised and no further action will be taken. Where appropriate, information will be passed to other departments or organisations for investigation e.g. Building Control, Devon County Council, and Environment Agency etc.

Site Visit

- 5.3 If the initial screening indicates that there may be a breach, a site visit will be made (if one has not already been carried out as part of monitoring the development). If the land and/or building(s) are occupied the enforcement officer may make an appointment with the owner/occupier. This is not always possible or advisable as it may alert them and enable them to temporarily remove or disguise the subject matter of the complaint. In some cases 24 hours' notice may be required to enter certain properties.
- 5.4 At the site visit the officer will identify themselves and explain the reason for the visit. Proof of authorisation to enter land under the 1990 Planning Act will be provided if requested. The enforcement officer's role is simply to gather the facts of the case and they will not always be able to advise on the acceptability of the works and the potential to gain consent for any unauthorised works.
- 5.5 The officer will record a description of the site and the alleged breach of planning control, take any necessary measurements/photographs, obtain the identity of the owner/occupier/person responsible for the activity/operations taking place if possible and identify any neighbouring properties likely to be affected.
- 5.6 If a breach of planning control has clearly taken place the owner/occupier/person responsible will be informed straight away (if they are present). If the case is not clear cut then the enforcement officer may need to confer with colleagues or check the legislation before reaching a decision. In either case where a breach has occurred the owner/occupier/person responsible will be advised that if they carry on with the activity/development this will be entirely at their own risk and may be subject to enforcement action. The investigating officer will have regard to the provisions of Sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 (PACE) in relation to cautioning suspected offenders.

Following the site visit

- 5.7 If the owner/occupier/person responsible was not present or further investigations were required then they will be contacted and advised of the Council's intended action and options available to resolve the matter as soon as possible after the site visit.
- 5.8 If it was established at the site visit that there is no breach the Complainant will be advised and no further action will be taken.

Further investigations

- 5.9 Further investigation may be necessary following the site visit to determine whether a breach has occurred and may involve:
- Monitoring the site to collect further evidence. Where appropriate, the complainant will be requested to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal enforcement action.
 - Serving a Planning Contravention Notice (PCN) requiring the owner/occupier/person responsible to provide information relating to the potential breach of planning control within 21 days (see Section 6).
 - Checking against the legislation to see if the works are within permitted development limits.
 - Consultation with other departments or organisations.
 - A Land Registry Search to establish ownership of the land (if registered) and a 'Requisition for Information' to identify any other people with an interest in the land together with information about the length of time the activity/development has been in existence.

Results of Investigations

- 5.10 The following outlines likely steps to be taken in certain scenarios and are summarised in a flow-chart at the end of Section 5 (see further sections 7, 8 and 9 in relation to unauthorised works to trees, listed buildings and non-compliance with a legal agreement):

The complaint may relate to a non-planning matter such as disputes over land ownership, boundary disputes, private covenants and legal agreements/obligations, moral or ethical concerns, commercial competition and private interests.

- 5.11 As these are outside the jurisdiction of planning, no planning enforcement action can be taken. However if the complaint can be dealt with by another Council service the Complainant will be advised and the relevant information passed on. If it appears that another authority or organisation may be able to assist the Complainant they will be advised of this and provided with contact details if possible.

The complaint may relate to an activity, building or works that are lawful for planning purposes, for example the works may be “permitted development”.

5.12 In these circumstances no planning enforcement action can be taken and the Complainant will be advised of this.

The complaint may relate to a minor breach of regulations and regarded as so trivial that formal action would not be justified as no harm is being caused (for example there is no harm to the amenity of an area and/or residents, no harm to the visual amenity of the area, no highway safety issues and the proposal complies with planning policy).

5.13 If action were taken in these circumstances the Council could be justifiably criticised and costs may be awarded in any resultant appeal. No planning enforcement action will be taken in these circumstances and the Complainant will be advised of this. Enforcement action will not therefore be taken against a minor or technical breach which causes no harm to the local area (examples could include a shed constructed a bit higher than permitted and located within a large garden away from neighbours and not highly visible, or a window inserted in a dwelling that does not overlook neighbours). Nor will enforcement action be taken purely to regularise breaches of planning control that have been found to be acceptable. In these cases an application may be invited for consideration through the usual process to regularise the situation but further formal action will not be taken regardless of whether or not an application is submitted.

A breach of planning control has occurred and there is considered to be planning harm

5.14 In these circumstances the Council will consider what enforcement action should be taken.

5.15 Although a complaint may be received regarding a single matter (for example a building being constructed in the wrong location), the Council will look at all other aspects of the development (such as window positions and height) to establish if any other breaches have occurred. If other breaches have occurred, these will be investigated.

5.16 There are time limits for taking enforcement action. In most cases the development will be immune from enforcement action if no action is taken:

- Within 4 years of substantial completion of the construction of a building;
- Within 4 years for an unauthorised change of use to a single dwelling;
- Within 10 years for any other breach.

5.17 These time limits do not prevent enforcement action where a further breach has taken place within 4 years of previous enforcement action, where it relates to a listed building, or where there has been deliberate concealment of a breach. Any changes to these timescales brought in by Government will require update accordingly.

6. TAKING ENFORCEMENT ACTION

- 6.1 Once investigations are complete and a breach of planning control causing harm has been identified, officers will decide whether or not it is expedient to take enforcement action. They take into account the development plan and any other material considerations. Many breaches of planning control can be resolved informally and by negotiation with the owner/occupier. Formal action will be taken only where other means to resolve the problem have been unsuccessful.
- 6.2 The Council will take enforcement action when it is essential to maintain public safety, the character and appearance of the area, the area's social and economic well-being and to preserve the natural and built environment. The impact of developments varies greatly and enforcement action should be proportionate to the specific breach.
- 6.3 Enforcement action will not be taken merely to rectify an absence of planning permission if it is likely that planning permission would have been granted for the development or where there is no loss of public amenity.
- 6.4 Where enforcement action is considered expedient officers will draw this to the attention of the person responsible (and the landowner if different). They will be advised of the most appropriate course of action, which will be proportionate to the breach of planning control, and generally as follows:

6.5 The development can be amended such that planning permission is no longer required:

The Council will advise if changes can be made to a proposal so that it no longer requires planning permission. If the development is amended such that it no longer requires planning permission, no further action will be taken once the works have been carried out and officers have confirmed that it no longer requires planning permission. The Complainant will be advised of the outcome.

6.6 The development could satisfy relevant policies and other material considerations with modification and/or the imposition of appropriate conditions:

The Council will request a "retrospective" application for the relevant permission/consent. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that permission will be granted. Any application would follow the normal planning process, including consultation and notification of neighbours. Formal enforcement action will not take place until after the application has been determined and will not be taken at all if the breach of planning control is remedied by the grant of permission.

6.7 The breach could be immune from enforcement action due to the passage of time:

The person responsible will be advised of the option to submit an application for a Certificate of Lawful Use or Development. A period of 1 or 2 months (according to the complexity of the matter) will be allowed for preparation of the application. This does not automatically imply that a certificate will be granted. Any application would follow the normal planning process. Formal enforcement action will not take place until after the

application has been determined and will not be taken at all if the breach of planning control is remedied by the grant of a certificate.

6.8 The breach is causing serious harm and permission is unlikely to be given:

The Council will ask for the activities or the works to cease voluntarily. A reasonable time will be allowed, depending on what needs to be done. For example business tenants will be allowed a suitable time to find somewhere else to operate if livelihoods are affected. A retrospective planning application will not be invited, but if one is submitted enforcement action may be suspended to allow determination of the application. However, if the proposal is fundamentally unacceptable and serious harm is being caused, the Council may not await the outcome of an application before taking further action.

6.9 The breach cannot be resolved by negotiation and/or a retrospective application is refused:

Enforcement action will be taken if it is expedient. This is a discretionary decision made on a case by case basis and must be taken only after proper consideration of the relevant facts and planning merits. Formal action must be justified and the specific requirements and the time period to comply with these must be reasonable. The responsible person will be advised of the right of appeal against refusal of retrospective permission but the Council will not await the submission and outcome of an appeal before taking formal enforcement action, because this can be used as a mechanism for prolonging a breach. There is a right of appeal against an enforcement notice and this can be dealt with concurrently with an appeal against a refusal of permission.

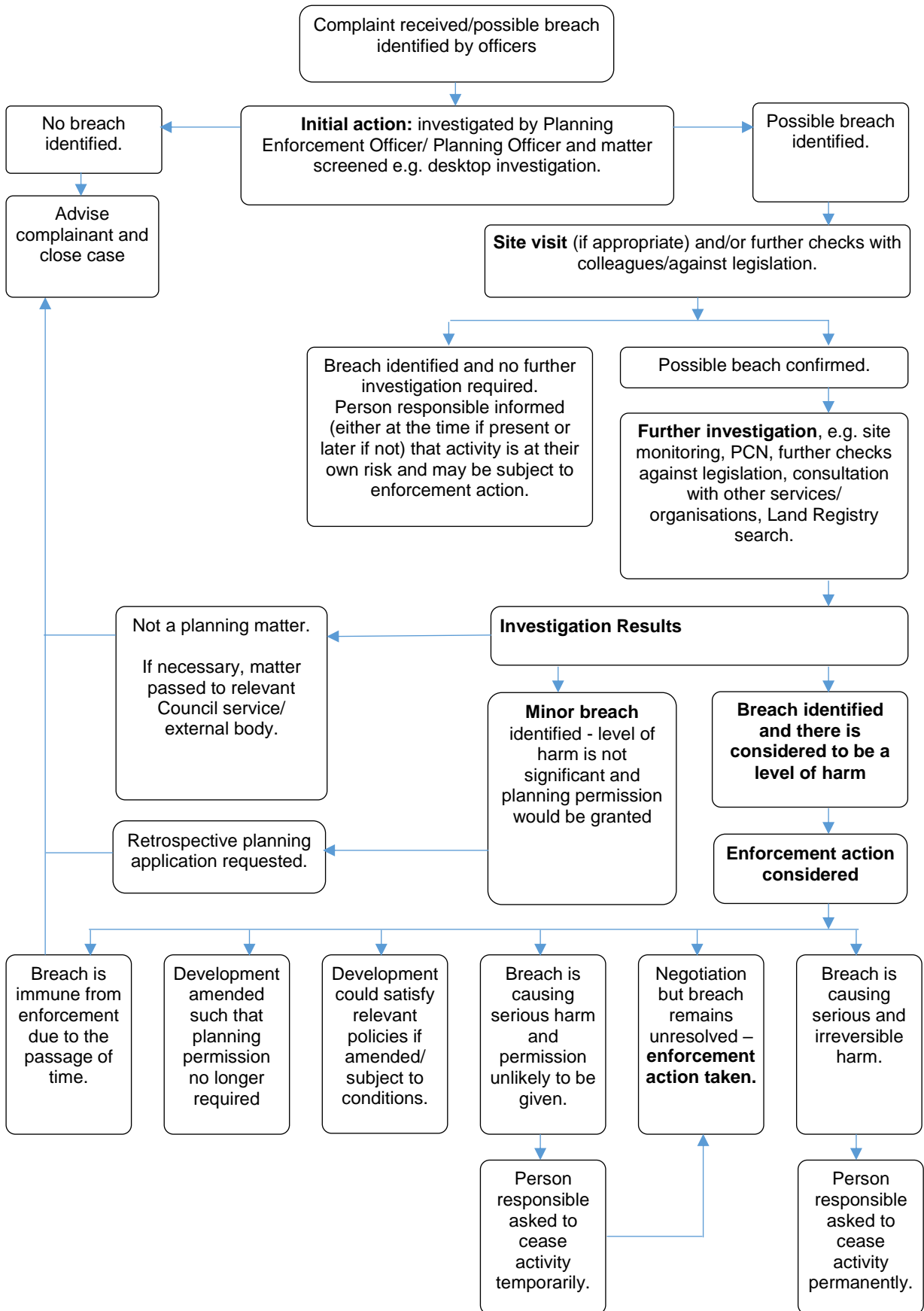
6.10 The breach is resulting in serious and irreversible harm requiring immediate prohibition:

The responsible person will be advised to stop work immediately. If the request is not complied with the Council will serve a 'Stop Notice' or 'Temporary Stop Notice' (TSN). These will only be directed at preventing the specific harm that is occurring. As a Stop Notice can only be served in conjunction with an enforcement notice it is not possible to serve one immediately a breach of planning control is identified. A TSN can be served on its own and so can be served promptly. This will compel those to stop the breach of planning control straight away (but only for a limited period of 28 days). During this time the Council will decide whether further enforcement action is expedient. A TSN cannot be used to effectively deprive someone of their home but it can be used to prevent the home being established. Stop Notices and Temporary Stop Notices are only available to deal with development requiring planning permission.

7. AUTHORISATION OF ACTION

7.1 Enforcement action is normally authorised by the Service Lead of Legal, in conjunction with the Development Management Manager under delegated powers. However, where matters are considered to be of strategic or wider importance, the Service Lead may refer the matter to the Planning Committee.

8. ENFORCEMENT PROCESS FLOW CHART



9. PLANNING ENFORCEMENT POWERS AVAILABLE

9.1 The following details the planning enforcement and related powers available to the Council.

Planning Contravention Notice

9.2 A Planning Contravention Notice can be issued under Section 171C of the Town and Country Planning Act 1990 and can be used to:

- allow the Council to require information needed for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and;
- can be used to invite its recipient to respond constructively to the Council about how any suspected breach of planning control may be satisfactorily remedied.

9.3 A planning contravention notice can be served when the Council believes that a breach of planning control may have occurred to find out more information before deciding what, if any, enforcement action to take. It cannot be used to undertake an investigative trawl just to satisfy the Council about what activities are taking place on a parcel of land.

9.4 The power is discretionary and as such the Council does not need to issue a planning contravention notice before taking any enforcement action.

9.5 Failure to complete or return a notice within 21 days is an offence. It is also an offence to provide false or misleading information on the notice. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Enforcement Notice

9.6 An enforcement notice should only be issued where the Council is satisfied that a breach of planning control has occurred and it is expedient and in the public interest to issue a notice.

9.7 An enforcement notice requires works to be undertaken to rectify a breach of planning control within a specified time period.

9.8 The legislation (Section 172 of the Town and Country Planning Act) 1990 requires that an enforcement notice shall: -

- State the nature of the alleged breach;
- Identify the land to which the notice relates;
- Clearly state the matters that appear to constitute the breach of planning control;
- State the Council's reason for issuing the notice, including any relevant development plan policies that are allegedly contravened;

- Specify the date on which the notice takes effect (not less than 28 days after service to allow for an appeal);
- Specify the steps which the Council require to be taken or the activities which the Council require to cease in order to remedy the breach or any injury to amenity it has caused;
- State a reasonable period for compliance after the notice takes effect, having regard to the practicalities of carrying out the required steps and the effect that the breach is having;
- Be registered as a local land charge in Part 3b of the Land Charges Register.

9.9 The enforcement notice will state the breach of planning control, the reasons for serving the notice and the steps to be taken in plain language that will be understood by anyone required to comply with its requirements. This is particularly important given that criminal liability attaches to any breach of the requirements of an enforcement notice. This should also make checking for compliance easier and assist in mounting a successful prosecution if the notice is not complied with. The enforcement notice may require the restoration of the land to its condition before the unlawful development took place; the demolition or alteration of any building or other works; the discontinuance of the use of land; or the carrying out of any building works or other operations.

9.10 The enforcement notice must be directed only at the specific breach. It cannot take away existing lawful rights to use land or retain buildings and other works. The Council can direct an enforcement notice to only part of the breach of planning control and/or it can require only a partial remedy. This is termed “under enforcement” and will be used to take action where only part of the unauthorised works causes harm and therefore only action against those elements is appropriate. The notice will be served on the owner of the land and therefore tenants carrying out works to a rented property should keep their landlord advised of any enforcement investigation on their property; together with anyone who we identify as having an interest in the land.

9.11 It is an offence not to comply with an enforcement notice once the period for compliance has elapsed, and there is no outstanding appeal. The LPA does have discretionary power under the legislation to extend the time period only if they consider it to be necessary. A person guilty of an offence is liable on conviction to an unlimited fine. The Courts will have regard to any financial benefit accrued from the offence when determining the fine. The Council on receipt of a successful conviction can apply for a Confiscation Order under the Proceeds of Crime Act 2002 to recover any financial benefit obtained through the unauthorised development.

Appeals against an Enforcement Notice

9.12 There is a right of appeal to the Secretary of State against an enforcement notice. The appeal must be lodged before the notice takes effect. Details of how to appeal will be included with the enforcement notice. An appeal can be lodged on one or more of the following grounds:

- a) That planning permission should be granted for what is alleged in the notice.

- b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
- c) That there has not been a breach of planning control.
- d) That at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice
- e) That the notice was not properly served on everyone with an interest in the land.
- f) That the steps required to be taken, or the activities required to be ceased, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by the breach
- g) That the time given to comply with the notice is too short.

9.13 When an appeal is made against an enforcement notice on ground a) above, an application for permission to retain the development is deemed to have been made. This will only be considered by the Planning Inspectorate if the appropriate fee (two times the planning application fee where applicable) has been paid.

The Breach of Condition Notice (BCN)

9.14 This is an alternative to an enforcement notice that is available to remedy the failure to comply with any condition of a planning permission. There is no right of appeal and failure to comply is an offence.

9.15 The BCN must specify the steps that must be taken, or the activities that must cease in order to secure compliance with the condition(s). The BCN may, therefore, be positive (requiring something to be done) or prohibitive (requiring something to stop). Unlike an enforcement notice, a BCN can only require full compliance. A BCN also has to specify a period for compliance, which shall be not less than 28 days.

9.16 Non-compliance with the notice is an offence that can be prosecuted through the Magistrate's court. There is no right of appeal against the notice. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Complying with an Enforcement Notice or Breach of Condition Notice

9.17 As soon as the compliance period set out in an enforcement notice or BCN has passed, enforcement officers will investigate whether or not the breach of planning control is continuing.

9.18 When officers conclude that notices have been complied with, this will be confirmed verbally to the owner/occupier and to anyone who has complained about the building works or activity. Compliance with an enforcement notice does not, however discharge it. The notice will remain in place to prevent any further breaches and it will continue as a registered charge on the land or property.

9.19 Failure to comply with the requirements of an enforcement notice or BCN is an offence. If there are grounds to suspect that an offence has been committed, interviews of

suspects or witnesses will be carried out in accordance with Police and Criminal Evidence Act 1984 (PACE) requirements. The Council will take firm action where the requirements of an enforcement notice or BCN have not been complied with.

Further action following non-compliance with an Enforcement Notice or BCN

- 9.20 The Council may attempt to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts (usually Magistrates Courts). Any decision to prosecute will have due regard to the availability, nature and strength of evidence and will consider whether the public interest is served (see sections below under Prosecution).
- 9.21 Alternatively, an injunction may be sought (see below). This is an order from the Court to comply with the Enforcement Notice. Failure to then follow the court order is contempt of court and carries the threat of a prison sentence.
- 9.22 The Council can take Direct Action (see below) when the requirements of a Notice have not been complied with. This will only be considered in exceptional circumstances. The Council can place a legal land charge against the property to enable all reasonable costs incurred in the direct action to be recovered and in certain circumstances enforce the sale of the land.

Stop Notice

- 9.23 The Council can, when appropriate to do so, under Section 183 of the Town and Country Planning Act serve a Stop Notice requiring alleged breaches of planning control (including activities) to cease immediately. Such a notice can only follow be served in conjunction with an Enforcement Notice. There are limitations on the service of this notice and additionally compensation may be payable by the Council in some circumstances if the recipient makes a successful challenge. It is used very selectively and it is not necessarily an instant solution.
- 9.24 The Stop Notice is not usually effective until 3 days after it is served and cannot prohibit the use of any building as a dwelling house.
- 9.25 In certain circumstances the Council can be liable for compensation if the associated enforcement notice is quashed, varied or withdrawn.
- 9.26 The serving of a notice is discretionary and should only be used where it is expedient that any relevant activity should cease before the expiry of the compliance period in the associated enforcement notice.
- 9.27 If a Stop Notice is contravened a person is guilty of an offence and if found guilty shall be liable upon summary conviction to a fine not exceeding £20,000 or on conviction on indictment to unlimited fine. The Court will have regard to any financial gain that has accrued or likely to accrue..
- 9.28 There is no right of appeal against a Stop Notice.

Temporary Stop Notices

- 9.29 Where the Council consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the Town and Country Planning Act 1990 enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition, the effect of the temporary stop notice will be immediate.
- 9.30 A Temporary Stop Notice can require an activity to cease, or reduce to minimise any impact but cannot be used to prevent the use of a building as a dwelling house.
- 9.31 A Temporary Stop Notice expires after 28 days. Should further action be required after the 28 days an enforcement notice and stop notice will be required.
- 9.32 If a Temporary Stop Notice is contravened a person is guilty of an offence and if found guilty shall be liable upon summary conviction to a fine not exceeding £20,000 or on conviction on indictment to unlimited fine. The Court will have regard to any financial gain that has accrued or likely to accrue.
- 9.33 There is no right of appeal against a temporary stop notice.

Injunction

- 9.34 Where the Council considers a breach of planning control to be a serious and immediate risk to health and safety, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction under section 187B of the Town and Country Planning Act 1990. This can be extremely expensive, but can be effective in appropriate circumstances. An injunction is a special court order that requires a party to refrain from certain acts or to carry out certain measures.
- 9.35 Proceedings for an injunction are the most serious enforcement action a Council can take as failure to comply with an injunction can lead to prison for contempt of court. As a result an injunction is usually a last resort following persistent breaches of planning control.

Planning Enforcement Order

- 9.36 Where somebody deliberately conceals unauthorised development, it may not come to light until the period for taking action (4 of 10 years) has expired. A planning enforcement order enables the Council to take action notwithstanding the time limits.
- 9.37 Where there is sufficient evidence of a breach, the Council can apply for a planning enforcement order under sections 171B, 171BB and 171BC of the Town and Country Planning Act 1990.
- 9.38 The application must be made to the magistrate's court within 6 months of the Council having sufficient evidence to identify the apparent breach. There is a right to be heard by the court. The Council has to prove that positive steps were taken to conceal the unauthorised development.

9.39 The effect of the order is that the Council will be able to take enforcement action, generally within a year of the order being granted.

Advert Removal Notice

9.40 Sections 225 of the Town and Country Planning Act 1990 provide the Council with powers to deal with illegal adverts.

9.41 Section 225A of the 1990 Act (as amended) allows the Council to remove an illegal advert through the serving of an Advert Removal Notice. If the notice is not complied with within 22 days, the authority may remove the structure/advert and recover any reasonable expenses incurred in doing so.

9.42 There is a right of appeal to the magistrate's court.

9.43 The Council also has powers under section 225 to remove or obliterate any placard of poster displayed illegally following advance notice to the person responsible for the display.

High Hedges Remedial Notice

9.44 The Council can take action where a hedge or a row of trees forming a hedge cause a significant loss of amenity to a neighbouring property. The legislation does however require complainants to have approached the owner of the hedge and pursued all reasonable means of mediation before making a complaint to the Council. If a complaint has been properly made and the Council decide that action should be taken to resolve the complaint, we may issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This action is under the Anti-Social Behaviour Act 2003 and is known as a remedial notice. The remedial notice can include long-term maintenance of the hedge at a lower height. It cannot involve reducing the height of the hedge below 2 metres, or its removal. Although the Council cannot require such action, the hedge owner is free to go further than the remedial notice requires. The remedial notice becomes a charge on the property and legal obligations under such a notice pass to any subsequent owners. It is an offence not to comply and if found guilty on summary conviction a fine not exceeding level 3 on the standard scale can be imposed and there is also a provision for daily fines if the works remain outstanding following a court order. The Council's decision can be appealed to the Planning Inspectorate by the applicant or person affected by the Notice.

Untidy Land Notice

9.45 Owners and occupiers sometimes neglect their land and buildings and allow them to become seriously unkempt or derelict. This can create eyesores that can be particularly damaging for the neighbourhood. Section 215 of the 1990 Act empowers planning authorities to require owners to take steps to alleviate these problems. These powers can be used in a variety of situations – e.g. heavily overgrown and neglected gardens; derelict buildings and sites that disfigure town centres and village centres. The power can also be exercised in conjunction with other environmental powers such as those directed to the upkeep of listed buildings and powers exercised by the Council's Environmental Health and Building Regulations Services. Officers will liaise with these services to ensure that the most appropriate remedy is used.

- 9.46 Officers will investigate such sites and if remedial action is necessary they will contact the owner and advise them that the state of their land and/or buildings is causing problems. They will be advised of the steps they need to take to alleviate the problems and given (initially) 28 days to voluntarily carry these out. If no serious effort has been made, the Council will serve a formal notice compelling the owner/occupier to take the necessary steps. The notice becomes effective after 28 days. There is a right of appeal to the Magistrates or Crown Court. If this happens the notice has no effect pending the outcome of the appeal.
- 9.47 Once the notice becomes effective, it is an offence not to carry out the required steps within the specified time period. The Council may prosecute the offender for non-compliance. It may also enter the land, carry out the works and recover the costs from the owner either by sending them a bill or applying to the Land Registry to place a charge on the property.

Prosecution

- 9.48 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.

The decision to prosecute:

- 9.49 In making a decision on a prosecution the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 9.50 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will then consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

The Evidential Test:

- 9.51 The first matter the Council will look at when considering a caution, administrative penalty or a prosecution is whether there is enough evidence to prosecute the matter. This is the evidential test. If the case does not pass the evidential test it must not go ahead no matter how serious or important the case may be. In order for a case to pass the evidential test there must be enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge.
- 9.52 Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction. This is detailed further in the overarching Regulatory Enforcement and Prosecution Policy published by the Council.
- 9.53 As part of the process the Council must consider what the defence case is and how it is likely to affect the prosecution case. A realistic prospect of conviction is an objective test; it means that a jury or a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and also whether or not it is reliable.

9.54 If the evidential test is satisfied then the most appropriate way of dealing with the matter will be assessed. When considering which course of action is the most appropriate the Council will consider the factors outlined below. This is called “the Public Interest Test”.

The Public Interest Test:

9.55 The more serious the offence is the more likely it is that a prosecution should take place. However the Council will weigh public interest factors carefully. Public Interest Factors in favour of and against Prosecution are detailed in the overarching Regulatory Enforcement and Prosecution Policy published by the Council.

Further Action:

9.56 Failure to comply following a successful prosecution may lead to further prosecutions to secure compliance where an offence is on-going.

9.57 Where an offence leads to on-going financial or other gain for the offender then the Council will consider whether to take action under the Proceeds of Crime Act 2002 to ensure that the offender does not gain from their actions.

Direct Action

9.58 The Council is empowered to take direct or default action to remedy a breach of planning control if the requirements of a Notice have not been complied with. This will only be considered in exceptional circumstances. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise when successive fines by the Courts have not proved to be a sufficient deterrent for the perpetrators of the breach. It may also be considered where the effects of a breach of planning control are so harmful that compliance with notices should not be subjected to delay in Court processes. The Council can place a legal land charge against the property to enable all reasonable costs incurred to be recovered. In some circumstances we can also enforce the sale of the land to recover our costs.

10. TREES

- 10.1 Section 198 of the 1990 Act provides the Council with the power to protect trees through the making of Tree Preservation Orders. Consent is then required to carry out works to the protected trees. Section 210 of the Act makes it an offence to cut down, uproot or wilfully destroy a protected tree or to wilfully damage, top, or lop a protected tree in such a manner as to be likely to destroy it.



- 10.2 Provided the trunk diameter is more than 7.5 cm at 1.5m above ground level, trees in Conservation Areas are similarly protected. Notice of any intended works has to be given to the Council and work is unauthorised until the Council has responded to the notice or 6 weeks have elapsed, whichever is the sooner.
- 10.3 Consent is not required for the following works to protected trees.
- a) Works to trees that are dead
 - b) Works to trees that are urgently necessary to remove an immediate risk of serious harm. 5 working days prior written notice must be given to the authority before cutting down or carrying out other work on a dead tree.
 - c) Works to trees that are necessary in order to implement a planning permission
 - d) Works to trees cultivated for the production of fruit where such work is in the interests of that trade or business.
 - e) Removal of deadwood from a living tree.

In relation to a) and b) above in particular it is best to check with the Councils Tree Officers before undertaking such work to ensure that they are satisfied that the tree is dead or that the works are genuinely urgent and necessary.

- 10.4 Section 97 of the Environment Act 1997 makes it an offence to remove what are termed “important” hedgerows, without the consent of the Council. Where this takes place the Council has the power to serve a ‘hedgerow replacement notice’.
- 10.5 The Council will give high priority to complaints relating to works to protected trees and hedgerows as any harm will be irreversible and arises from not just the loss of the tree or hedgerow itself but the loss of wildlife habitat that it provided.
- 10.6 Tree enforcement issues fall into two principal categories:
- unauthorised works or, damage to, or removal of trees that are protected by Tree Preservation Orders or situated within Conservation Areas (see below), and;
 - breach of planning conditions relating to tree retention and protection. These will be dealt with in the same way as a breach to any other planning condition (see above).
- 10.7 There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.
- Firstly, anyone who cuts down, uproots or willfully destroys a tree, or who lops, tops or willfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable on conviction to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.
 - Secondly, anyone who carries out works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.
- 10.8 In addition to directly carrying out unauthorised works on protected trees, it is an offence to cause or permit such works.
- 10.9 In order to bring a successful prosecution, the Authority must be able to prove that:
- the defendant has carried out, or caused, or permitted works on the tree;
 - the tree was protected;
 - the works were carried out without the Authority’s consent; and
 - the works were not exempt works.
- 10.10 Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning

Authority). The planting of a replacement tree is the minimum the Council will require from a landowner who has removed a tree in contravention of the legislation.

10.11 The Council has a range of possible further courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- seek a prosecution;
- administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence;
- under section 206 of the Town and Country Planning Act 1990, require the planting of a replacement tree for each tree destroyed;
- under section 207 of the same Act, serve a replanting direction. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;
- On receipt of a successful conviction can apply for a Confiscation Order under the Proceeds of Crime Act 2002 to recover any financial benefit obtained through the works; and,
- take no formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

10.12 Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being dealt with on its own merits.

10.13 Where enforcement action against works to protected trees and important hedgerows is involved, the Council will take the following into account alongside the Evidential and Public Interest Tests outlined in Section 6 above:

- The size of the tree(s)/length of hedge(s) involved;
- The prominence of the tree(s) or hedge(s);
- The condition of the tree(s) or hedge(s);
- The life expectancy of the tree(s) or hedge(s);
- The seriousness of the offence;
- The loss of/effect on amenity;
- Whether there have been persistent offences by the people involved;
- Any other mitigating factors.

10.14 Where a tree which is the subject of a Tree Preservation Order is removed without consent, or a tree in a Conservation Area is removed without consent, the Council will:

- If the tree is a single specimen tree of high amenity value in a prominent location and having a significant impact on amenity, prosecute those responsible for its removal and seek replacement planting in all but exceptional circumstances;
- In all other cases (e.g. lesser value trees or groups), prosecute, issue a Caution and/or require the provision of a semi-mature replacement tree in all but exceptional circumstances;
- With regard to trees in a Conservation Area, the seriousness of an offence will be judged by determining if the tree would have been made the subject of a Tree Preservation Order. If the tree was not worthy of a Preservation Order then the Council is unlikely to Prosecute but will seek the planting of a suitable replacement tree and will decide whether or not to issue a Caution.

10.15 Where unauthorised works are carried out to trees the subject of a Tree Preservation Order or are located within a Conservation Area:

- The seriousness of the offence is determined by the extent and quality of works and the effect on visual amenity and life expectancy;
- Where minor works have been carried out to an acceptable standard, the owner and any other relevant parties will be advised that any further works must be subject to a formal application;
- Where more extensive works have taken place that would not have been granted, the Council will decide whether to issue a Caution or Prosecute; Prosecution is more likely where there is a clear wider effect on visual amenity.
- Where works have been carried out but would have been granted, but to an unacceptable/poor standard, the Council will ensure remedial works are undertaken.

11. LISTED BUILDINGS

11.1 Unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990. A person who is guilty of such an offence will be:

- Liable on conviction to imprisonment not exceeding 3 months or a fine not exceeding the statutory maximum or both; or
- Liable on conviction to imprisonment for a term not exceeding 12 months or a fine or both.



11.2 In deciding the amount of fine to be imposed on any person convicted, the court will take into account any financial benefit which has been gained as a result of the offence.

11.3 The Council has a range of possible courses of action available to deal with cases of unauthorised works to listed buildings. These include the following:

- seek a prosecution;
- administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence;
- serve a breach of condition notice – note it is an offence to fail to comply with a condition on a listed building application;
- serve a temporary stop notice or stop notice;
- negotiate the reversal of works/works to address the unauthorised works;
- serve an enforcement notice to remedy the works – note that there are no time limits for issuing listed building enforcement notices;
- take no formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

- 11.4 With regard to Listed Buildings, the Council also has the following powers at its disposal: Urgent Works Notices and Repairs Notices and more information non this is available in Historic England's publication 'Stopping the Rot - A Guide to Enforcement Action to Save Historic Buildings'.

Urgent Works Notices

- 11.5 Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 enables local authorities to undertake works which are urgently necessary for the preservation of a listed building. Works can only be carried out to parts of a building that are not in use. The owner will be given a minimum of seven days' written notice of the intention to carry out works. The notice will describe the works to be carried out.
- 11.6 Section 55 of the Planning (Listed Buildings and Conservation Areas) Act 1990 allows the Council to recover the costs of the works from the owner. The owner will be served a notice requiring them to pay the expenses of the works. The notice can be appealed to the Secretary of State within 28 days of the service of the notice.

Repairs Notices

- 11.7 Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 allows the Council to serve a Repairs Notice on the owner of a listed building specifying works that it considers are reasonably necessary for the preservation of the building.
- 11.8 After 2 months, if it appears that reasonable steps are not being taken to carry out the repairs, the Council can begin compulsory purchase proceedings under section 47 of the Planning (Listed Building and Conservation Areas) Act 1990. This process requires confirmation from the relevant Secretary of State.
- 11.9 Serving a Repairs Notice does not commit the Council to proceed to compulsory purchase action. The Council can withdraw the Repairs Notice at any time giving notice to the owner.
- 11.10 Decisions as to what action to take in cases of unauthorised works to listed buildings will be taken in the public interest, with each case being dealt with on
- 11.11 When considering enforcement action against unauthorised works to listed building or other heritage assets, in addition to the Evidential and Public Interest Tests the following will be taken into account:
- an injunction will be considered where it would (i) prevent anticipated unauthorised works (ii) remedy damage where there is urgency, for example where urgent remedial action is required to prevent further imminent degradation and (iii) compel compliance with an enforcement notice where there are little signs of it happening;
 - Prosecution will be likely to be used where unauthorised demolition has taken place or where unauthorised alterations are considered to be harmful to the special architectural or historic character of the building;
 - Prosecution is unlikely if the alteration is sympathetic to the special architectural or historic character of the building;

- The Council will judge the effect on the character of the building, its listing and consider any change to the form, scale, appearance integrity and special character that contributes to it being of special interest; the structural integrity of the building; and the relationship between the building and its setting.

12. BREACHES OF SECTION 106 LEGAL AGREEMENTS

12.1 When granting planning permission for development, the Council can impose planning obligations on the applicant. These obligations are usually contained with a legal agreement (often called a S.106 Agreement) and require certain works to be carried out or contributions to be paid/complied with at certain times. These agreements sit alongside the planning permission such that the land owner and developer are required to comply with any obligations with the legal agreement as well as any conditions on their planning permission.

12.2 If the Council decides that there is a breach of a planning obligation (e.g. a financial contribution has not been paid or required works have not been carried out within the timescale specified within the legal agreement), there are three options available:

- The Council can apply to the Court for an injunction to force the obligation(s) to be complied with. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment;
- The Council can enter the land to complete works if an obligation required works to be carried out by a certain time and this has not been carried out. The Council must give 21 days' notice of the intention. The Council will seek to recover costs incurred in the completion of the works;
- The Council may place a local land charge on the land or property which is binding on successive owners.