

Public Document Pack

Mid Devon District Council

Scrutiny Committee

Monday, 22 February 2016 at 2.00 pm
Exe Room, Phoenix House

Special Meeting
Friday, 11 March 2016 at 4.00 pm

Those attending are advised that this meeting will be recorded

Membership

Cllr F J Rosamond
Cllr Mrs H Bainbridge
Cllr Mrs J B Binks
Cllr Mrs C P Daw
Cllr Mrs S Griggs
Cllr T G Hughes
Cllr Mrs J Roach
Cllr T W Snow
Cllr N A Way
Cllr Mrs G Doe
Cllr R M Deed
Cllr Mrs A R Berry

A G E N D A

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 **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.
- 3 **MEMBER FORUM**
An opportunity for non-Cabinet Members to raise issues.
- 4 **MINUTES OF THE PREVIOUS MEETING** (*Pages 5 - 10*)
To approve as a correct record the Minutes of the last meeting of this

Committee (attached).

The Committee is reminded that only those members of the Committee present at the previous meeting should vote and, in doing so, should be influenced only by seeking to ensure that the minutes are an accurate record.

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 **STAFF SICKNESS**

To receive a presentation from the Head of Human Resources and Development regarding sickness.

8 **STAFF SURVEY UPDATE** (*Pages 11 - 14*)

The Committee to receive a report from the Head of Human Resources and Development providing an update regarding the progress of the Staff Survey Action Plan, giving members information relating to action taken so far.

9 **LEGAL SERVICES SIX MONTHLY UPDATE** (*Pages 15 - 16*)

To receive a six monthly update from the Legal Services Manager.

10 **PLANNING ENFORCEMENT** (*Pages 17 - 30*)

At a meeting of the Committee held on 2 November 2015 it was AGREED that the Head of Planning and Regeneration report to the Committee regarding the Enforcement Service, delays in enforcement taking place and plans to rectify this.

The Committee to receive a report from the Head of Planning and Regeneration.

11 **PLANNING ENFORCEMENT CASE UPDATES** (*Pages 31 - 36*)

At a meeting of the Committee held on 2 November 2015 it was AGREED that the Head of Planning and Regeneration report to the Committee regarding the Enforcement Service, delays in enforcement taking place and plans to rectify this.

The Committee to receive a report from the Head of Planning and Regeneration regarding specific cases that had been reported.

During discussion of this item it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public

may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC

RECOMMENDED that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

12 **ST ANDREW STREET DEVELOPMENT**

At the request of the Committee the Head of Housing and Property Services has provided the following update:

We have recently been advised that McCarthy and Stone have withdrawn their interest in purchasing the site at the rear of the Town Hall which has planning permission for 45 retirement homes.

Officers are currently reviewing alternative arrangements in developing the site and will report on this at a later date.

13 **LEISURE CENTRE CAR PARKS**

At a meeting of the Scrutiny Working Group 'Reviewing the Costs of Efficiency Measures' Members identified leisure centre car parks as a potential source of income to the authority.

It was **RECOMMENDED** that the Scrutiny Committee investigate the potential to charge for car parking at leisure centres.

14 **IDENTIFICATION OF ITEMS FOR FUTURE MEETINGS**

Members are asked to note that the following items are already identified in the work programme for future meetings:

Digitalisation for Members
Safeguarding
RIPA Update
Policy for the Removal of Gypsies and Travellers from Land
Council Website
Communications Working Group - 6 Monthly Review
Performance and Risk
Cabinet Member for Finance
Q & A with the CE

Note: - this item is limited to 10 minutes. There should be no discussion on items raised.

Jill May
Interim Chief Executive
Friday, 12 February 2016

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 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 Julia Stuckey on:

Tel: 01884 234209

E-Mail: jstuckey@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 25 January 2016 at 2.00 pm

Present

Councillors

F J Rosamond (Chairman)
Mrs H Bainbridge, Mrs J B Binks,
Mrs C P Daw, Mrs G Doe, Mrs S Griggs,
T G Hughes, D J Knowles, Mrs J Roach and
T W Snow

Apologies

Councillor(s)

Mrs A R Berry, R M Deed and N A Way

Also Present

Officer(s):

Andrew Jarrett (Head of Finance), Nick Sanderson (Head of Housing and Property Services) and Julia Stuckey (Member Services Officer)

110 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllr R M Deed, who was substituted by Cllr D K Knowles, Cllr Mrs R Berry and Cllr N A Way.

111 **PUBLIC QUESTION TIME**

There were no members of the public present.

112 **MEMBER FORUM**

There were no issues raised under this item.

113 **MINUTES OF THE PREVIOUS MEETING**

The minutes of the last meeting were approved as a correct record and **SIGNED** by the Chairman.

114 **DECISIONS OF THE CABINET**

The Committee **NOTED** that none of the decisions made by the Cabinet at its last meeting had been called in.

Discussion took place regarding Car Parking Charges which had been called in at the previous meeting by Cllr Mrs J Roach. The Councillor informed the Committee that she understood that the matter could not be called-in again but that she still did not consider that the economic effect of the increased charges on the local economy had been taken into consideration. She suggested that the Town Centre Manager

and Economic Development Officer should have been asked to investigate this further.

The Head of Finance explained that detailed work had been undertaken as part of the process, that the proposed charging was consistent across the main towns and that prices were competitive with other areas. He informed the Committee that they would be able to monitor the effects of the revised charges by reviewing financial updates that Members would receive, but that prices were not the only impact on vendors and that, for example, weather, fuel costs and road works could all affect income.

It was **RESOLVED** that the Committee receive a six monthly update regarding Car Parking Charges and that the report include input from the Town Centre Manager and Economic Development Manager regarding the impact on the towns, as well as financial information.

(Proposed by the Chairman)

115 **CHAIRMAN'S ANNOUNCEMENTS (00:22:05)**

The Chairman reminded the Committee that a Special Meeting had been put in place for 11 March 2016 at which Mr Mel Stride MP and Mr John Finn of the Clinical Commissioning Group would be in attendance. The Chairman requested that questions be submitted to the clerk in advance of the meeting.

116 **BUDGET 2016-17 (00:24:12)**

The Committee had before it a report * from the Head of Finance for it to consider options available in order for the Council to set a balanced budget for 2016/17 and agree a future strategy for further budget reductions for 2017/18 onwards.

The Officer explained that in December 2015 the Council received formal confirmation of its Formula Grant Settlement. The provisional formula grant award for 2016/17 amounted to £3.04m. This was unlikely to change significantly and was approximately £130k lower than what had first been estimated. This had increased the draft 2016/17 General Fund budget deficit but other savings proposals had helped to reduce it to circa £405k.

The Head of Finance explained that the formula grant announcement gave provisional figures for the three years up to 2019/20: As predicted the Revenue Support Grant, which currently stood at £1.7m, would completely disappear by 2019/20. The current and provisional future formula grant amounts were:

	15/16	16/17	17/18	18/19	19/20
	£m	£m	£m	£m	£m
Revenue Support Grant	1.7	1.02	0.5	0.18	0.00
Business Rates	2.0	2.02	2.06	2.13	2.19
Total Formula Grant	3.7	3.04	2.56	2.31	2.19

Using the provisional Business Rate Retention and Revenue Support Grant figures in the Medium Term Financial Plan showed that by 2019/20 the authority would need to find approximately £1.1m of savings, close to the amount previously forecast. At this

point there were no details on the proposed changes allowing Councils' to retain more of the business rate income.

Since the budget had first been discussed at the Policy Development Groups and at Cabinet meetings the Finance team and service managers had revisited budgets to strive to deliver more savings or increase income levels.

This process had improved the General Fund budget by circa £422k and now left a budget gap of £405k.

The Officer informed the Group that to date this authority had used the New Homes Bonus Grant to fund economic development projects, help fund the capital programme and to fund certain "one off" revenue projects. It was a possibility that some of these funds could be used to off-set the budget gap but that it should be noted that there was uncertainty regarding the future of the New Homes Bonus and that it could not be guaranteed for future years.

Discussion took place regarding:

- Reserves and how much it was appropriate to hold. The Head of Finance informed the Committee that he considered 25% of net expenditure to be an appropriate level.
- Priorities within the draft Corporate Plan;
- Town and Parish Councils being able to add to their precept and therefore their ability to make contributions to services;
- Public consultation and the priorities that the Citizens Panel had highlighted as important to them;
- Income generation from solar investments and Market Walk;
- Devolution and how the cost of this would be met;
- A Council Tax increase of 1.99% was included in the proposed budget;
- Policy Development Groups and whether there was a need for a further Group to cover the economy.
- The proposed Locality Budget which would allow each Member £500 to spend within their ward.

It was **RECOMMENDED** to the Cabinet that:

- a) If the New Homes Bonus was used to balance the budget for 2016/17, that this happen for one year only, and that continued income generation be sought to balance future budgets.

(Proposed by the Chairman)

- b) That the proposed £21K Locality Budget be invested in schemes to generate long term income for the authority and that the suggested £500 not be issued to individual Members.

(Proposed by Cllr Mrs J Roach and seconded by the Chairman)

- c) That this Council investigate whether there is a need to have the current number of Councillors or whether this number could be reduced.

(Proposed by Cllr T W Snow and seconded by Cllr Mrs J B Binks)

- d) That this Council investigate the Committee structure as a whole, with regard to adding an additional Policy Development Group, to ensure that Committees best served the Authority with regard to the Corporate Plan.

(Proposed by Cllr Mrs J Roach and seconded by Councillor T W Snow)

Note: - Report previously circulated and attached to Minutes.

117 **MEMBERSHIP OF THE JOINT EAST AND MID DEVON CRIME AND DISORDER SCRUTINY PANEL 2015-16**

As Councillor Mrs N Woollatt and Councillor B A Moore were no longer Members of Scrutiny Committee there was a need to agree replacements for membership of the joint East and Mid Devon Crime and Disorder Scrutiny Panel 2015-16. It was **AGREED** that Mrs J Roach would join Cllr T G Hughes and F J Rosamond with Councillor T W Snow as the substitute Member.

118 **ENVIRONMENT AGENCY**

At the request of Cllr N Woollatt the Committee had before it a report * from the Environment Agency regarding an incident of contamination of a Mid Devon river. A newspaper article referring to the incident was also attached to the report.

Discussion took place regarding the contents of the report. The author of the newspaper article had made reference to the Environment Agency claiming that there had been 'no evidence of fish kill'.

It was **RESOLVED** that a letter be sent to the Environment Agency asking how they concluded that there had been no fish kill.

Note: - Report * previously circulated and attached to Minutes.

119 **IDENTIFICATION OF ITEMS FOR FUTURE MEETING**

Website
Safeguarding
Planning Policy and Procedures Review

(The meeting ended at 3.55 pm)

CHAIRMAN

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Scrutiny

22 February 2016

Staff Survey Action Plan

Cabinet Member Cllr Margaret Squires
Responsible Officer Head of Human Resources & Development

Reason for Report: To provide an update the progress of the Staff Survey Action Plan giving members information relating to action taken so far.

RECOMMENDATION: That the actions taken in respect of the Staff Survey are noted.

Relationship to Corporate Plan: Staff wellbeing and interactions in order to build a better and more resilient workforce are important – a staff survey was undertaken and actions taken will impact on delivery of the Corporate Plan to ensure a happier workforce.

Financial Implications: None.

Legal Implications: None.

Risk Assessment: No risks identified at present but failure to deliver may mean the Council will not achieve due to staff dissatisfaction.

1.0 Introduction

1.1 This report highlights the actions necessary as a response to the production of the Staff Survey done in late 2015.

2.0 Background to the report

2.1 At the meeting of the Scrutiny Committee held in October last year it was reported that an action plan would be produced to support the delivery of the key elements of the Staff Survey action plan with dates and milestones. The Scrutiny Committee asked for an update of issues raised and action taken.

3.0 Issues highlighted

3.1 The staff survey has resulted in a number of issues being raised which will be addressed via the action plan, some of these include management training and highlighting the route staff should take in some areas. However personal responsibility is identified as something that all staff need to address. Everyone has a right to raise issues and there are mechanisms in place to ensure action can be taken but unless they are prepared to raise issues they cannot then complain when things are not corrected.

3.2 A pilot programme is being rolled out in Housing to enlist the views/thoughts of staff in respect of the survey. This is a more grass roots approach

as there will be no managers involved. Information coming forward will then be passed to managers to consider. It is hoped that this will be a useful way to ascertain the concerns of staff and to feed this into the process. A report on the progress will be given to Management Team in six months' time and if this has proved to be useful it could be used as a template for the rest of the Council.

3.3 The main issues are shown as Appendix 1.

Contact for more information: Jill May, Head of HR and Development, 01884 234381 / jmay@middevon.gov.uk

Circulation of the Report: Cllr Margaret Squires, Management Team

Staff Survey Results

Main Areas of concern

- Appraisals
- Communication
- Corporate Priorities
- Consultation Process
- Leading by Example
- Morale
- Pressure
- Stress
- Reduction in staff

What is being done

1. There is an ongoing review of the appraisal system which will be completed by April 2016.
2. All staff briefings for major issues will be arranged, which will ensure that all staff receive the same message through team meetings.
3. The recent corporate plan review has seen staff from all areas being involved in the consultation. The individual sections will be producing their business plans over the next couple of months and these will also be aligned to the corporate plan. Lessons have been learnt in respect of how important it is to ensure staff are able to participate to ensure that there is a “sanity check” on the feasibility of the objectives.
4. In all reviews/reorganisations a process of consultation is undertaken. Some staff felt this was not robust enough and lip service was given to the process. We have an agreement with the union that we will use a particular route:
 - A business case goes to management team for consideration
 - If agreed, the union are informed
 - HR arranges a meeting with those concerned, generally a group meeting but also 1 to 1's, if required
 - The consultation process lasts for 30 days and all those concerned plus the union are invited to put their concerns/alternate proposals to the manager initiating the review
 - The manager then responds to these concerns, sometimes with alternate proposals, taking into account the views provided, or if that is not possible, the reasons why it is not possible.

This process needs to be reinforced and adhered to in order to give confidence to staff that their concerns will be taken into account. The Head of HR will provide

written guidance to all managers reiterating the requirement to use the proper route.

5. With the arrival of a new Chief Executive will come a new culture. The Head of HR will be working with the management team to support the new CE. A new management development course for all managers will be in place by July 2016.
6. Morale is a very personal thing and some staff complained of issues not being dealt with. Staff are being asked to take personal responsibility to raise any issues causing concern firstly through their line manager, but if the concern is not addressed, then to take the matter further up the management chain.
7. Pressure is again a personal thing and in general most people respond well to having some pressure. Staff are being asked to speak to their line manager in the first instance if they feel there is too much pressure, but if this does not help then to take the matter further up the management chain and also to include HR.
8. Stress is something taken very seriously and all managers and staff have been trained in respect of an awareness of the causes and symptoms of someone suffering with stress. We will continue to run such courses, but again the emphasis is on the individual speaking to their manager and asking for help and also the manager being aware and taking action when they see someone in difficulty.
9. Reduction in staffing is an ongoing issue. Again staff are being asked to flag up any difficulties when they arise with their manager, but also to take the matter up the management chain if they are not satisfied with the response they get.

UPDATE ON THE RECOMMENDATIONS FROM THE LEGAL SERVICES WORKING GROUP

This report is an update to Members on the Legal Service following the last update report to the Scrutiny Committee in June 2015.

The workload of the Legal Service has continued to be extremely heavy over the last 6 months and this does not show any signs of reducing.

Some examples of the work undertaken by Legal Services include:

- Dealing with complex legal issues arising from the redevelopment of the Town Hall site in Tiverton
- Contracts for the letting of units in Market Walk, Tiverton
- Premier Inn development
- Acquisition on land on eastern urban extension for development of up to 75 social dwellings
- Review of community leases and Council's industrial and commercial portfolio
- Illegal slaughter and cutting up of animals case including an application under the Proceeds of Crime Act
- High profile planning enforcement cases including the Manor House in Cullompton and other cases
- Planning appeals Hackpen Stables, Blackborough and land west of Uffculme
- High Court case against large developer for payment of affordable housing contribution
- Commercial fly-tipping case
- Heavy demand for legal advice in housing law in the areas of ASB, flexible tenancies, possessions and injunctions
- Assisting Monitoring Officer
- Providing advice regarding large contracts

When considering the level of work in terms of property and assets, it is clear from the Estates business plan that this is only going to increase. As a result of this the Trainee Legal Executive (now returned from maternity leave and working part time) supports the Principal Solicitor with property matters.

The second Trainee Legal Executive is working closely with the Solicitor on Housing matters and is also supporting the rest of the team.

The Head of Communities and Governance and the Legal team had an away day back in August 2015. During the away day we considered the workload of the Legal team going forward, what the service needs to look like in the future and how we deliver and resource this.

A paper was taken to Management Team where a proposal for admin support for the Legal team was discussed and agreed. The post will be recruited to in the near future. The post holder will undertake admin functions for all

members of the team and this will free up the Trainee Legal Executives to enable them to give greater support to the Solicitors.

Succession planning is an important part of the plan going forward and opportunities to develop the Trainee Legal Executives form part of this plan.

The team will also be considering the most efficient and effective way of working going forward. We will focus on the requirements of the team in terms of digital transformation. This will include the scanning of all of the records in the deeds room. This will also form part of the role of the admin support post.

It is recommended that the Scrutiny Committee note the contents of this report and agree that the no further update in respect of the working group actions is necessary.

SCRUTINY
22 FEBRUARY 2016

AGENDA ITEM:

PLANNING ENFORCEMENT

Cabinet Member Cllr Richard Chesterton
Responsible Officer Head of Planning and Regeneration

Reason for Report: To respond to Scrutiny Committee's request for a report on the enforcement of planning control.

RECOMMENDATIONS:

- i) **That a benchmarking exercise on planning enforcement be undertaken with other nearby councils to include levels of enforcement activity and local performance indicators.**

Relationship to Corporate Plan: Priorities within the emerging 2016 – 2020 Corporate Plan are economy, homes, community and environment. The enforcement of planning controls through investigation and where appropriate the taking of action in the public interest by the Council as Local Planning will assist in upholding these priorities.

Financial Implications: Certain types of planning enforcement action such as the issue of an enforcement notice have a right of appeal whilst others have an opportunity for compensation to be claimed. Both may have financial implications for the Council. In terms of appeals, there is a risk of a cost award against the authority at appeal if it is found to have acted unreasonably. Financial implications may also arise if the LPA has to pay compensation for example for loss or damage attributable to a stop notice.

Legal Implications: Formal enforcement action may take a variety of forms with a wide range of legal tools available. Enforcement must be undertaken in accordance with Government guidance and must be in the public interest.

Risk Assessment: Most types of formal enforcement action require a resolution of Planning Committee. Enforcement reports to Committee set out the range of options available together with a recommendation on what action, if any, is appropriate in that instance. Such assessment of different enforcement options allows for an understanding of the implications of different types of enforcement action before the decision is made thereby reducing the risk to the authority.

1.0 Planning enforcement – introduction.

- 1.1 Planning enforcement is a statutory function of local government although the power to take formal action is discretionary. The Council as Local Planning Authority has responsibility for the investigation of reported breaches of planning control. Unauthorised development can be detrimental to the local environment and a source of community tension. Failure to investigate and enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system.

- 1.2 The basis for the planning system is to protect amenity, whether it is the quality of the environment in general, or the quality of life of people living close to development. Powers have been granted to the Local Planning Authority to ensure that action can be taken against unauthorised development or a breach of planning control which is causing harm to the amenity of the area.
- 1.3 A breach of planning control is:
- The carrying out of development without the required planning permission;
 - Failing to comply with any condition or limitation subject to which planning permission has been granted.
- 1.4 Planning enforcement also investigates other breaches such as unauthorised works to listed buildings, the illegal display of advertisements on land or buildings and the failure to properly maintain land.
- 1.5 Local Authorities are advised to take formal enforcement action only in cases of obvious harm or nuisance and/or where persuasion and negotiation have failed. It is a discretionary power based upon proportionality. Action should only be taken where it is expedient to do so.
- 1.6 In deciding whether it is expedient to take enforcement action, the Local Planning Authority must consider:
- Whether it is in the public interest to do so;
 - Whether the breach would unacceptably affect public amenity or the existing use of land or buildings (would planning permission be granted if applied for and considered against development plan policies).
 - Whether the proposed action is commensurate with the breach (proportionate).
- 1.7 The decision on whether action is proportionate and, if so, which action to take will need to take into account all the circumstances of each individual case. In practical terms consideration will need to be given to:
- the impact of the unauthorised development;
 - the potential for damage to the environment;
 - the benefit of taking action.

It will not always be proportionate to take formal enforcement action having considered the circumstances of the case. Enforcement powers are to be used in a reasonable manner, to remedy adverse impacts on the environment or on neighbours and should not be used solely to regularise a situation where no planning permission exists. Such situations should be dealt with by negotiation. Enforcement action should not be used as a punishment, but instead is a tool to rectify unacceptable breaches of planning control. The fact that development has gone ahead without planning permission should not prejudice the consideration of a subsequent, retrospective planning application if it is a reasonable use of land and in cases in which no criminal

offence has been committed, planning permission is likely to be granted. Retrospective applications must be considered in the same way as any other – they should not be penalised because they are retrospective.

- 1.8 Undertaking development without planning permission is not a criminal offence. In such instances it is only when an enforcement notice has not been complied with that a criminal offence has occurred. However unauthorised works to listed buildings, unauthorised works to protected trees or the display of advertisements without consent are criminal offences.
- 1.9 In many cases, the ability to take formal enforcement action is time limited as development may become immune from enforcement if no action is taken:
- Within 4 years of the substantial completion of a breach of planning control (operational development).
 - Within 4 years for an unauthorised change of use to a single dwelling house.
 - Within 10 years for any other breach of planning control such as other changes or use or other breaches of conditions.

Exceptions include the taking of further enforcement action within 4 years of earlier action over the same breach or where the breach was fully or partly concealed. No such immunity period exists for unauthorised works to a listed building.

2.0 **Relevant policies and guidance.**

- 2.1 The **National Planning Policy Framework** (2012) acts as guidance for Local Planning Authorities in drawing up plans and making decisions about planning applications. Within the introduction it makes it clear that it sets out the Government’s planning policies for England and how these are expected to be applied. Paragraph 207 relates to the enforcement of planning control and states:

‘Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.’

- 2.2 Policy DM31 of the **Mid Devon Local Plan Part 3** (Development Management policies) adopted 2013 reflects this and states:

‘The Council will investigate unauthorised development, acting proportionately to the scale of the suspected breach of planning control. Enforcement action will be taken where it is appropriate to do so and in the public interest.’

Text accompanying this policy also makes it clear that when undertaking investigations, the Council will act in proportion to the scale of the suspected

breach to which it relates. The Council will then take enforcement action where it deems such action to be appropriate, having regard to the scale of the breach and the impact upon public amenity.

- 2.3 The Council is committed to publishing a Local Enforcement Plan to ensure enforcement is managed proactively and in a way that is appropriate to Mid Devon. It will set out the Council's approach to enforcement, including timescales for action and stating in detail how the Council will respond to suspected breaches of planning control. The prioritisation of planning enforcement resources in terms of planning breaches will also form part of the document. This is important that this plan is produced as it will provide greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary enforcement powers. Work on drafting this plan is advanced and it is expected that it will go before the Planning Policy Advisory Group and then to Cabinet within the next few months. It is intended that a period of consultation will then follow. This will enable the wider Membership, Town and Parish Councils as well as the public to engage on the contents of the plan before its adoption.
- 2.4 An Enforcement Policy Statement was produced in 2005, but has not been updated since. It is proposed to be updated and reviewed through the production of the proposed Local Enforcement Plan.
- 2.5 National **planning practice guidance** is also relevant. It provides guidance on range of enforcement related matters, much of which are covered within this report:

What is a breach of planning control?

When should enforcement action be taken?

What are the time limits for taking enforcement action?

Why is effective enforcement important?

What are local enforcement plans important?

What options are available to Local Planning Authorities to tackle possible breaches of planning control in a proportionate way?

Why is early engagement important?

Is there a public register of enforcement action?

Planning practice guidance on enforcement is available here <http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

3.0 **Enforcement powers and tools available.**

- 3.1 Summarised information on the range of enforcement powers and tools available is attached to this report at **Appendix 1**. This is intended to be for general guidance only as the circumstances of each case will dictate the action to be taken. They may broadly be divided into 5 different types:
- i) For information gathering.
 - ii) Where conditions imposed on a planning permission are not being complied with.
 - iii) Where there is a continuing breach of planning control.

- iv) Where a breach of control is causing serious harm or has the potential to cause serious or irrevocable harm to amenity.
- v) Other

4.0 **No formal action.**

4.1 No further action will be taken by the Council where it is established that there has not been a breach of planning control.

4.2 National planning practice guidance advises that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Additionally in some instances formal enforcement action may not be appropriate.

4.3 On a case by case basis, Local Planning Authorities are advised that formal enforcement action should be avoided where:

- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development (That planning permission would be granted if applied for. A retrospective application to remedy the breach of planning will be sought);
- In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

5.0 **Scheme of delegation on planning enforcement matters.**

5.1 The scheme of delegation to the Head of Planning and Regeneration by Planning Committee excludes the taking of formal enforcement action under delegated powers other than:

- i) The issue of a breach of condition notice
- ii) Where urgent action is required to commence enforcement proceedings consisting of the service of a temporary stop notice, enforcement notice, stop notice or to commence injunction proceedings. In this instance, these proceedings can be instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member.
- iii) Prosecution proceedings regarding any unauthorised advertisement or fly posting (other than where in consultation with the Legal Services Manager).

(The scheme of delegation clarifies that formal enforcement action is not considered to include requests for information such as under a planning contravention notice.)

5.2 In accordance with this scheme of delegation, formal enforcement action is authorised by Planning Committee.

6.0 The planning enforcement team at Mid Devon.

6.1 The planning enforcement team at Mid Devon comprises 2.5 full time equivalent officers who each cover an area of the district. The 0.5 post is currently a temporary contract that is reviewed as budgets are set. The team is currently fully staffed, but due to vacancies operated with 1 post holder only for part of 2015. Once formal enforcement action is authorised by Planning Committee papers are forwarded to Legal Services for action.

6.2 Information on activity and performance within the enforcement service is reported quarterly to Planning Committee. That for the current financial year to date is as follows:

Enforcement 2015/16	Quarter 1	Qu 2	Qu 3
Number of new enforcement cases registered	14	71	54
Number of enforcement cases closed	47	53	39
Number of committee authorisations sought	3	2	1
Number of planning contravention notices served	Data available from Qu 2	9	5
Number of breach of condition notices served	0	1	0
Number of enforcement notices served	2	1	0
Enforcement site visits undertaken within 15 days of complaint receipt (target 87%)	100%	94%	89%

7.0 Investigation of breaches and monitoring.

7.1 The proposed Local Enforcement Plan will set out how the implementation of planning permission is monitored and how alleged cases of unauthorised development are investigated. The extent to which the implementation of planning permission is pro-actively monitored is tempered by the resources available. The main source of knowledge of alleged breaches of planning control arises from the receipt of complaints which may come from the public, Parish or Town Councils, elected members or other groups. Planning and other officers may also become aware of breaches through their work and while on site visits. Enforcement Officers also check on sites of known enforcement risk periodically as resources allow. Enforcement complaints are prioritised according to the seriousness of the alleged breach. Pro-active enforcement of all planning conditions would require significantly greater resources than currently available. Instead a primarily reactive service is targeted at reported breaches. Other Local Planning Authorities in the region act in a similar manner, although it should be noted that not all have a dedicated planning enforcement team, with the enforcement role undertaken by planning case officers.

- 7.2 Applicants are advised on grant of planning permission of the need to comply with the attached conditions. Applicants are also asked to advise the Council in advance via the return of a form of their intention to start work together with the date. This allows checking that pre-commencement conditions have been complied with. Planning conditions need to meet a series of tests. These include precision and that they are capable of being enforced. The drafting of conditions so that they are capable of being enforced and include the necessary triggers and safeguards is important.
- 8.0 **Benchmarking.**
- 7.3 Level of activity in opening and closing cases and the issue of various notices are reported to Planning Committee quarterly. However at present these are not robustly benchmarked against other Councils within the area, although historically this exercise was undertaken. However this has dropped off within the last several years as planning and enforcement teams in the area have experienced reduced resourcing and restructuring. The re-establishment of common reporting of enforcement activity between Councils would assist in the management and monitoring of the service and provide greater transparency over the level of service provision.
- 7.4 Establishing meaningful local performance indicators for planning enforcement that do not impose targets on the number of different notices to be issued is not straightforward. Such targets are inappropriate as assessment of whether formal enforcement action is warranted and the type of action to take, are undertaken on a case by case basis dependent upon the breach and its impact. Currently the percentage of enforcement site visits undertaken within 15 days of complaint receipt is monitored, but this does not report case outcome or speed. Again, investigation of performance indicators monitored and reported by other Councils in the area will assist in establishing appropriate local performance indicators.
- 8.0 **Confidentiality.**
- 8.1 Planning enforcement investigations are carried out on a confidential basis until the breach of planning control becomes the subject of formal legal action or authority for such action is sought. The details of those reporting a breach of planning control are also considered confidential. In cases of prosecution or appeal, the complainant may be invited to give a witness statement if their evidence is considered crucial.
- 9.0 **Enforcement cases.**
- 9.1 To assist in the preparation of this report, Members of Scrutiny Committee were asked to provide information on any particular cases and issues of concern to them so that they could be addressed. A total of 10 site specific enforcement cases were identified. These cases are in the main 'live' with ongoing investigation that may yet lead to formal action. Therefore their consideration in public may disclose information falling within the description of exempt information under the Local Government Act 1972. The cases are addressed within a separate accompanying Part 2 report.
- 10.0 **Summary and conclusions.**

- 10.1 The enforcement of breaches of planning control is often complex with opportunity for those contravening to submit planning applications to regularise the breach and to appeal at different stages. This often results in delay. Enforcement action is not appropriate in all cases, particularly where it is a technical breach of planning control with little impact or where planning permission would be approved if applied for. Furthermore, there is also clear Government advice that enforcement action should not be used as a punishment, but as a tool to address harm where it is the public interest to do so. This often leads to misunderstanding of the purpose of enforcement action and timescales within which it operates. Public expectation is often of enforcement action as a punishment for a breach and in cases where the breach causes little or no harm and planning permission would be granted if applied for.
- 10.2 Nevertheless there will be cases where it is clearly in the public interest to seek to swiftly resolve breaches that are causing harm to amenity. Councils have a range of enforcement tools available to them to do this. There is a duty to investigate breaches, although taking action itself is discretionary and based upon the merits of the case.
- 10.3 This report seeks to provide an overview of planning enforcement system and how it is resourced within Mid Devon. It is important that the Local Enforcement Plan is finalised. It is recommended that a benchmarking exercise with other local councils is re-established in order to more clearly monitor the operation and effectiveness of the service. The service operates within finite resources and seeks to deliver an effective service within a challenging environment where expectations are high.

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List of Background Papers:

National Planning Policy Framework

<http://planningguidance.communities.gov.uk/blog/policy/>

Planning Practice Guidance

<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

Mid Devon Local Plan Part 3 (Development Management policies)

<https://new.middevon.gov.uk/planning-policy/mid-devon-local-plan/part-3-development-management-policies/>

Appendix 1

Enforcement powers and tools available.

1.0 Introduction.

1.1 The following provides summarised information on the range of enforcement powers and tools available. This is intended to be for general guidance only as the circumstances of each case will dictate the action to be taken. They may broadly be divided into 5 different types:

- i) For information gathering.
- ii) Where conditions imposed on a planning permission are not being complied with.
- iii) Where there is a continuing breach of planning control.
- iv) Where a breach of control is causing serious harm or has the potential to cause serious or irrevocable harm to amenity.
- v) Other

2.0 For information gathering.

2.1 Planning Contravention Notice (PCN)

2.1.1 This is not formal enforcement action but may in some cases be required to establish what is happening on a site where there are genuine grounds for concern that a breach of planning control has occurred or is likely to occur. A PCN may also be necessary when a site operator or owner has not complied with requests for information, or where they have already been advised that planning permission is necessary for any or all of the activities on the site. In such cases, a PCN can be used to establish the facts of the case and let the operator know that the Council is seriously concerned about a site. It is intended to act both as an information gathering tool and statement of intent by the Council, but it is not a charge on land and therefore is still relatively informal. Failure to respond carries the risk of a fine.

2.2 S.16 of the Local Government (Miscellaneous Provisions) Act 1976 and S.330 of the Town and Country Planning Act 1990

2.2.1 These are alternative means of establishing information about land and its ownership. These are less well used than the PCN which is intended to be the main method by which information can be gathered about potentially unauthorised development.

2.2.2 Other sources of information may include HM Land Registry and the District Council's planning and building regulation records.

3.0 Where conditions imposed on a planning permission are not being complied with.

3.1 Breach of Condition Notice (BCN)

3.1.1 This was brought in under the Planning and Compensation Act 1991. It allows for the Local Planning Authority to issue a notice that a condition of a planning consent is not being complied with and is an alternative course of

action to issuing an enforcement notice. There is no appeal against this notice when issued under the provisions of Section 187A. Failure to comply with a BCN within the specified period (at least 28 days) is a criminal offence liable to a fine not exceeding £2,500.

4.0 Where there is a continuing breach of control.

4.1 Enforcement Notice

4.1.1 An enforcement notice must:

- i) Specify the breach of planning control;
- ii) Specify the steps to be taken to remedy it;
- iii) Specify the reasons why it is necessary and expedient to take action (which must be in the interests of “amenity”);
- iv) Specify the date on which the notice comes into effect;
- v) Specify the period for compliance;
- vi) Specify the precise boundaries of the land to which the notice relates;
- vii) Accompany an explanatory note about rights of appeal.

4.1.2 An appeal to the Secretary of State against the service of an enforcement notice suspends the notice until the appeal has been dealt with. Failure to comply with an enforcement notice within the time permitted is an offence liable to prosecution.

5.0 Where a breach of control is causing serious harm or has the potential to cause serious or irrevocable harm to amenity.

5.1 Stop Notice.

5.1.1 Where the breach of control is causing irrevocable damage, the Council may consider the issue of a Stop Notice in tandem with the enforcement notice. The Stop Notice prohibits any continuation of the activity specified in the enforcement notice. It can only be used where serious or irreparable harm and more immediate action is justified. There is no right of appeal against a stop notice and it is an offence to contravene it.

5.1.2 It should only be used in exceptional circumstances when the effects of the unauthorised activity are seriously detrimental to the amenities of adjoining occupiers or the surrounding area. If the related enforcement notice is quashed, varied or withdrawn or the stop notice withdrawn, the council may be liable to pay compensation for any financial loss resulting from the issuing of the stop notice. Time limits for compliance with a stop notice are to be specified in the notice and should not normally be less than 3 days after its service, unless the Council has “special reasons for specifying an earlier date and a statement of those reasons is served with the notice”. The time limit should not exceed 28 days after its service.

5.1.3 The stop notice will cease when it is withdrawn; the related enforcement notice is withdrawn or the compliance period for the enforcement notice is withdrawn or the compliance period for the enforcement notice expires. Failure to comply with a Stop Notice is an offence liable to prosecution.

5.2 Temporary Stop Notice

5.2.1 A notice which can be served quickly to stop suspected breaches from carrying on, giving the planning authority time to consider all the relevant issues. It requires the breach of planning control to cease immediately. Unlike a stop notice it does not need require an enforcement notice to be served first. It is valid for 28 days only, by which time the Council will have had opportunity to consider whether to serve an enforcement notice. There is no right of appeal and contravention is an offence liable to prosecution. Compensation may be payable if the activity has planning permission, is permitted development, if it is subsequently found to be lawful or in some circumstances if the temporary stop notice is withdrawn.

5.3 Prosecutions and Cautions

5.3.1 In general, breaches of planning control are not criminal offences (with some exceptions). However failure to comply with a statutory notice such as an Enforcement Notice is a criminal offence and prosecution for non-compliance may result. It is also an offence to give false or misleading information in response to a notice. This too may lead to prosecution.

5.3.2 As well as offences, which follow failure to comply with a statutory notice, there are other offences, which stand alone, such as:

- unauthorised display of an advertisement
- unauthorised works to a Listed Building
- damage to a tree protected by a Tree Preservation Order or in a conservation area
- damage to certain hedgerows.

5.3.3 In some cases the Council may find that it is appropriate to offer a formal caution. Decisions on whether to prosecute or offer a caution will be taken in accordance with the Code for Crown Prosecutors. The Code requires two tests to be passed before initiating a prosecution: the evidence test and the public interest test. There must be sufficient evidence for a realistic prospect of conviction and certain factors for and against prosecution must be weighed.

5.4 Injunction

5.4.1 “Where a Local Planning Authority considers it necessary or expedient for any factual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise their other powers...”

5.4.2 The scope for obtaining an injunction is wider than for serving an enforcement notice as it may refer to an actual or “apprehended breach” and it is “personal” in that it relates to the activities of a person or persons rather than a use of land (although it is possible for it to be served against “persons unknown”).

5.4.3 The use of this legal tool is often limited to the most serious of cases where irreparable harm is being done and other options have failed. It is the most serious enforcement action as failure to comply with an injunction leads to a contempt of court and can lead to imprisonment. The Planning Practice Guidance advises its use as a last resort and only if there have been persistent breaches over a long period and other enforcement options have

been or would be ineffective. The Council will need to justify this action to the Court.

5.5.1 Direct action and recovery of costs

The Local Planning Authority can consider taking “default” action to secure compliance with the terms of an enforcement or other notice, carrying out the works specified in the “steps” required in the notice and then taking action to recover the costs from the owner of the land.

6.0 Other.

6.1 Powers of entry.

6.1.1 Local Planning Authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes. This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.

- To ascertain whether there is or has been any breach of planning control on the land or any other land;
- To determine whether any of the local planning authority’s enforcement powers should be exercised in relation to the land, or any other land;
- To determine how any such power should be exercised; and
- To ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

6.2 Retrospective planning application.

6.2.1 A Local Planning Authority can invite a retrospective application to regularise the situation. It is important to note that:

- Although a Local Planning Authority may invite an application, it cannot be assumed that permission will be granted. Such an application must be considered in the normal way;
- An enforcement notice may also be issued in relation to other elements of the development.

6.3 Planning enforcement order.

6.3.1 Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

6.4 Certificate of lawful use or development.

6.4.1 An application for a certificate of lawful use or development can establish that an existing use of land, some operational development or some activity being carried out in breach of a planning condition is lawful for planning purposes and therefore no enforcement action may be taken. It does not give planning permission, but instead establishes the lawfulness of the use, activity or development.

6.5 **S215 Town and Country Planning Act 1990 (Untidy Land).**

6.5.1 A notice may be served under s215 of the Town and Country Planning Act where the Local Planning Authority considers that the amenity of part of their area is adversely affected by the condition of land. The notice sets out works to remedy the condition of the land, but can only require works that relate to the visual appearance as seen from public vantage points. No other works can be required as they would be deemed excessive and as a result the notice could fail in the event of any subsequent appeal. A period of at least 28 days must be given for the works to be carried out from when the notice is served. There is a right of appeal to the Magistrate's Court.

6.5.2 If the s215 notice is not complied with, the Local Planning Authority may enter the land and take the steps required by the notice and recover the cost of doing so from the landowner together with expenses reasonable incurred in doing so.

6.6 **Negotiation.**

6.6.1 Government guidance supports negotiation as the most appropriate initial resolution tool. Time may be given to remedy the breach or justify its retention. Such cases may be where there is little or no apparent harm and it is not so serious as to warrant immediate action or where it may be justified by some other benefit. It should not be allowed to delay formal action.

7.0 **A range of other powers are available to Local Planning Authorities to address unauthorised works to listed buildings, unauthorised advertisements and works to protected trees.**

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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