



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

## **Section 2 – Report**

### **1.0 Introduction – background to planning enforcement**

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

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

- 1.5 The approach adopted by the Council (Mid Devon) is necessarily to prioritise high-risk and high impact breaches, understanding that the council is not equipped (financially or in terms of staff) to address every alleged breach.
- 1.6 As a point of reference, in recent months the council has served 25 notices such as Enforcement, Breach of Conditions, and Planning Contravention Notices. Total notices showing on the system is 37, so 67.57% of notices have been served recently. It must also be noted that planning law requires officers to look at 'regularising' the alleged breach rather than serve notices.

2.0 The member-led working group

- 2.1 The member-led working group was formed under the previous Council administration and began work in early 2021.
- 2.2 Recommendations were put forwards by the working group in a report dated September 2021. The recommendations of the working group are set out below.
- 2.3 Officers continued to report against progress against the recommendations during 2022.
- 2.4 A current/up to date position is set out below in terms of progress against the original recommendations:

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

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

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

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

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

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

#### 4.0 Next steps

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

#### **Financial Implications**

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

#### **Legal Implications**

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

#### **Risk Assessment**

No risks identified the report is for information only

#### **Impact on Climate Change**

N/a in regards to this report

#### **Equalities Impact Assessment**

N/a in regards to this update report

#### **Relationship to Corporate Plan**

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

#### **Section 3 – Statutory Officer sign-off/mandatory checks**

N/a

**Statutory Officer:**

N/a

**Date:**

**Cabinet member notified:** (yes)

**Section 4 - Contact Details and Background Papers**

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**Background papers:**

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