

Report for: Scrutiny Committee

Date of Meeting:	15 th January 2024
Subject:	Planning enforcement within Mid Devon
Cabinet Member:	Cllr Steven Keable, Cabinet Member for Planning and Economic Regeneration
Responsible Officer:	Richard Marsh, Director of Place
Exempt:	N/A
Wards Affected:	Relevant to all wards.
Enclosures:	N/A

Section 1 – Summary and Recommendation(s)

This update report has been prepared at the request of the Scrutiny committee.
The report seeks to:

1. Review Key Performance Indicators (KPI's) established since the last Scrutiny discussion on planning enforcement in July 2023;
2. Provide an update in relation to Planning enforcement within Mid Devon, and;
3. Set out the anticipated next steps for the service through 2024.

Recommendation(s):

That Members note the contents of this report.

Section 2 – Report

1.0 Introduction – background to planning enforcement

- 1.1 An introduction to planning enforcement was provided to the Scrutiny committee at the time of the previous report in July 2023, however a brief summary of that introduction is provided below for ease of reference.

- 1.2 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 – 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.
 - 1.3 In fact, planning necessarily relies upon the majority of landowners/developers complying with regulations and restrictions and self-policing. In the majority of cases, land and property owners do comply and enforcement activity is therefore typically focused on the minority of cases where owners/developers fail to abide regulations or conditions.
 - 1.4 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.
 - 1.5 In cases where a breach of planning has occurred, it is normal 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.
 - 1.6 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.
 - 1.7 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.
- 2.0 Current situation
- 2.1 Since the last report to Scrutiny in July 2023, the significant things to note are set out below.

2.2 Further to the request by the Scrutiny committee, the service has now developed and implemented key performance indicators (KPIs) for the enforcement service. These KPI measures show;

- The total number of cases open/live;
- The number of new cases opened in a Quarter;
- The number of cases closed in a Quarter, and;
- The number of low, medium and high risk cases.

2.3 These KPIs are reported through the performance dashboards for Planning and are presented to the planning committee on a quarterly basis. The most recent KPI report was presented at the 22nd November 2023 planning committee meeting. The KPIs for Q1 and Q2 show the following information:

Enforcement Stats 2023/24 by Quarter

	Q1	Q2
Total Cases deemed to be Low	214	266
Total Cases deemed to be Med	5	5
Total Cases deemed to be High	16	10
Total Open Cases	235	281
Cases Closed in Quarter	155	64
New Cases Rec'd in Quarter	78	87

Caseload % Breakdown

	Q1	Q2
Total Cases	235	281
Low	91.06%	94.66%
Medium	2.13%	1.78%
High	6.81%	3.56%

2.4 The data/KPIs show that at Q2;

- The Authority had 281 open cases. This is not untypical with 'live' cases often totalling around 300.
- That the Authority continues to receive a large number of new cases every quarter, and equally closes a similar number of cases each quarter. The team therefore tends to keep pace with work and there is regular churn in the cases considered.
- The majority of cases (>90%) are 'low' risk cases with the minority (<10%) as 'high' risk. It is these high risk cases where the specialist

enforcement officers time is most needed in order to resolve these complex/high risk cases and these are the cases which are necessarily prioritised by the authority.

- The data demonstrates that the number of 'high' risk cases has significantly reduced – demonstrating that the team has been successful in addressing the most severe cases between Q1 and Q2. This is significant as it is these cases which take a significant amount of officer time – across various departments and at all levels of seniority.

2.5 It should also be noted that it is the high-risk cases can often be long-running owing to their complex nature and/or the level of engagement needed with property owners and wider residents.

2.6 In terms of recent successes: It should also be noted that;

2.6.1 The department/team have recently successfully defended a planning appeal relating to an enforcement notice served requiring the demolition of an unauthorised building within the district. This work has been ongoing for a considerable period of time and has taken significant amounts of officer time – however it does clearly demonstrate that Mid Devon is successful in its enforcement activities and, where the breach is serious, planning enforcement activity will be proactively and decisively undertaken.

2.6.2 A recent LGO review of a long running, complex and contentious enforcement case has determined that the Authority has acted correctly and reasonably in how it has gone about seeking to address issues in relation to planning breaches. This case is ongoing from an enforcement perspective, but it does demonstrate independent endorsement of the way in which the LPA is addressing enforcement matters.

2.7 However, despite these successes and the positive KPI measures, it is fair to recognise that planning enforcement is a difficult area for the authority as it is discretionary (i.e. not a statutory function, unlike others); the authority has limited financial means to support the activity (it is non-income generating), and; it is difficult to recruit trained and experienced staff owing to a widespread shortage of skilled officers.

2.8 In the recent past, the council has deployed significant amounts of extra funding in to the planning enforcement team to support agency staff and a temporarily expanded team (of 3) in order to stabilise the service.

- 2.9 Enforcement officer resources returned to the normal establishment level (2 FTE) early in 2023 owing to the financial pressures on the council and owing to the successful recruitment of an additional permanent member of staff.
- 2.10 Shortly thereafter, one officer unfortunately resigned to take up employment with another authority. A recruitment exercise was immediately undertaken to recruit a replacement officer with 2 applications being received. The role was offered to one applicant who subsequently declined the job offer and was then offered to the 2nd applicant, with the 2nd applicant accepting the role. However, immediately prior to taking up the role, this applicant withdrew for personal reasons.
- 2.11 At this point in time, again owing to the financial position of the council, the managed position on enforcement cases, the cost of repeat advertisement and the difficulty in recruiting skilled staff, the decision was taken to run the service with one officer on a temporary basis and monitor workload.
- 2.12 Subsequently, owing to continued high case volume within enforcement and reducing workload within the main planning services (owing to economic conditions and a consequential downturn in applications), it was considered appropriate and beneficial to explore how spare planning officer capacity might be used to deal with low risk/low severity matters. This ensuring the dedicated enforcement officer could primarily focus on high risk, and therefore time intensive, cases.
- 2.13 To support the work of the planning officers, the enforcement officer has produced a suite of template letters and documents for use by officers. This will ensure an efficient and effective use of staff resources and ongoing procedural compliance.
- 2.14 Unfortunately, however, our remaining dedicated enforcement officer has also now resigned from their role. As a consequence of this, and to ensure continuity of service, the authority is now seeking to employ an agency enforcement officer whilst a simple review of resource is conducted and the required recruitment exercise(s) progressed in order to secure replacement resource. It should be noted that, as set out and demonstrated above, it is difficult to recruit experience and appropriately skilled planning enforcement officers and so it is anticipated that it may be challenging to recruit to the role as currently structured. Thought has been given to how to address this risk and this is set out in more detail below.

3.0 Next steps

- 3.1 As set out above; the council is, as a consequence of resignations, expecting to imminently undertake a simple review of enforcement resources ahead of proceeding to seek to recruit replacement enforcement resources on a permanent basis.
- 3.2 In the interim, it is expected that the council will utilise temporary agency staff to deal with the more complex enforcement matters and planning officer capacity to deal with simple and low risk enforcement matters. This will introduce additional cost to the service than had been anticipated and, whilst it is not expected to generate a service overspend, it will reduce the level of expected under-spend which was anticipated to be generated to support the Council's in-year financial position and associated savings.
- 3.3 It should also be noted that Mid Devon is proactively engaging with neighbouring authorities in order to consider whether shared services might be viable in relation to planning enforcement and/or whether other authorities have surplus planning enforcement capacity which we may be able to utilise in the short term, pending a permanent solution.

Financial Implications

Planning enforcement is a discretionary and non-fee generating service, but provision for permanent enforcement officers is made within the council's establishment and within planning budgets despite the fact that the service as a whole does not cover its operating costs through the income generated from planning applications.

Although this presents a financial challenge for the council on an ongoing basis, proportionate planning enforcement resource provision within the team/corporate establishment is considered to be appropriate as it helps to mitigate any potential risk to the Council by taking proportionate action in relation to planning enforcement and especially in relation to high-risk and serious planning breaches. It also seeks to afford public confidence in the planning service by ensuring that the service is able to take proportionate action in relation, especially in relation to the most severe planning breaches.

In recent times, a vacant post (created from an inability to recruit) has been generating an under-spend which has been supporting the achievement of the Council's vacancy management target to achieve a required in-year saving. The simple review of planning enforcement resources now proposed will have a strong mind to the financial position of the council and a proportionate approach will be adopted which seeks to deliver the required level of enforcement activity to

support action on high-risk and severe cases, whilst also ensuring, as far as possible, a sustainable financial position for the service.

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 through the work it undertakes.

Risk can also accrue from unreasonable enforcement activity and a lack of general compliance on key issues such as data protection. The authority also therefore manages risk by ensuring enforcement action is proportionate and reasonable and by carefully managing information relating to alleged breaches and any investigations underway.

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 (as no decisions are required and no negative impacts are foreseen).

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

Agreed by or on behalf of the Section 151

Date: 03 Jan 2023

Statutory Officer: Maria de Leburne

Agreed on behalf of the Monitoring Officer

Date: 03 Jan 2023

Chief Officer: Stephen Walford

Agreed by or on behalf of the Chief Executive

Date: 03 Jan 2023

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 03 Jan 2023

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Richard Marsh, Director of Place

Email: marsh@middevon.gov.uk

Background papers: None.