

Responses to Public Questions not sent prior to the meeting

Nick Quinn

My first question relates to Agenda Item 9 – Establishment Update.

When the interim Establishment update was presented to Scrutiny on 14 August 2023, I asked if the Council had an organisation chart showing the areas of responsibility and reporting lines of all posts.

Councillor Gilmour responded by saying that the end of year Establishment report, set for February, would be the time for a formal structure chart - "*and that is something that, as Chair of Scrutiny, I would like to see happen*".

I asked if the chart would be published and Councillor Gilmour replied "Yes". The meeting minutes show that: "*The Chairman, in response, confirmed that one would be prepared and published*".

My Question is: Why has this not been done?

Response: The Establishment report makes clear on the front cover that a full establishment chart will be circulated once the current consultation on the Corporate Management Team has been completed.

Response from the Corporate Manager for People, Governance and Waste

My second question relates to the Agenda item 11 - Planning Enforcement.

The proposed Enforcement Policy confirms that nothing will be done for the vast majority of reported breaches, but I would like to ask about one where something can be done.

A Planning Inspector has issued a decision on an appeal regarding a planning condition at the Anaerobic Digester plant at Red Linhay, outside Tiverton.

After commenting on "*... the alleged inaction since the earlier grant of permission for the anaerobic digester with the corresponding condition*", the Inspector made the decision that:

The noise assessment, and any works required as a result, must be completed within 6 months of this decision.

If this is not done, then: "*the use of the anaerobic digester shall cease until such time as a scheme is approved and implemented*".

My Question is: If the noise assessment and works required, at Red Linhay, have not been properly completed by 12 July 2024 - will this Council issue an immediate Stop Notice on this site?

Response: The council will monitor compliance with this condition and act appropriately and proportionately in considering any enforcement activity. It should be noted that in this case, the council had originally sought a shorter-timetable for the submission of the noise assessment (1 month), but this period was extended to 3 months by the Inspector during the appeal process. This clearly shows the council's intent to resolve this matter in a timely manner.

Response from the Director of Place and Economy

Barry Warren

My questions are prompted from the report and documents the subject of Item 11 on your agenda.

The main heading of the report is 'Local Enforcement Plan Mid Devon District Council 2024' yet all the rest of the documentation is referred to as 'Local Planning Enforcement Policy'.

1. Is it a plan or a policy?

Response: The document is a policy.

Response from the Director of Place and Economy

Ms Doyle had sent all members of Scrutiny Committee a very detailed response to the document which I hope you have all read as she raised issues which I would have raised. I was the Chairman of the working group which prepared the original report and recommendations on Planning Enforcement and this current document is not what we envisaged since it contained a lot of words but not a lot of policy that can or would be implemented.

2. I ask that this committee gives full attention to the document, and public comments, before recommending its acceptance by Cabinet?

Response: The Committee responded to this plea during the meeting.

Members had always been told by officers that there was no need for Planning Committee to oversee Planning Enforcement as this would be covered by the relevant Cabinet member. Paragraph 7.1 on page 11 of the document made reference that the *Service Lead of Legal may refer a matter to Planning Committee.*

3. Would the Planning Committee have an opportunity to see the policy document and have any say on the content?

Response: The planning committee and the Planning Policy Advisory Group have both had advanced sight of the draft policy and the opportunity to consider and discuss the content of it.

Response from the Director of Place and Economy

In the report the word '**proportionate**' appears six times in relation to action to be taken.

4. How is 'proportionate' or 'proportionately' interpreted by Officers at MDDC when deciding on actions?

Response: This is looking at proportionate action being relative to the nature of harm caused.

Response from the Director of Legal, HR & Governance (Monitoring Officer)

I have received a letter from the Council alleging data breaches in relation to my use of emails. The letter accuses me of using my personal email account to write to officers in relation to non-enforcement of planning conditions some 5 months after I ceased to be a councillor! I understand a number of former councillors have also received letters including one who had forwarded a bus timetable from his Council email account! These actions must have taken considerable Officer time and resource to put together and it could be construed as discriminatory, intimidatory and bullying.

5. In the light of stated staff shortages, does this look like proportionate action and proper use of resources?

Response: The Council takes its legal responsibilities as a data controller extremely seriously. Council staff and Councillors are required to adhere to various policies and practices around data security and retention in order to comply with these duties. In the event of a data breach the Council may refer the matter to the Information Commissioners Office for advice and guidance on appropriate action. The Council would then follow that guidance to ensure that we are compliant with the regulations around data security.

It is a matter of some regret that the Council has had to write to a small number of former Councillors reminding them of the need to comply with data management practices. However, it is important that the Council takes appropriate action to ensure the effective management of data in accordance with our policies.

Response from the Director of Legal, HR & Governance (Monitoring Officer)

Louise Doyle

QUESTION 1 – QUESTION TO CHAIR

In January, I asked the Authority to share with certain elected members (appointed by Scrutiny or Planning) how they had categorised, investigated, resolved and closed cases in the past couple of years. In response, the Authority refused stating "enforcement activity is legally privileged". I recognise the confidentiality of the requested spreadsheet would not contain personal info (why would it) confidentiality would be maintained. Further councillors are GDPR compliant.

This request was important because (oddly) 95% of cases are being categorized as low. Low means...

1. Minor tweaks to developments with permission or permitted development
2. Satellite dishes and
3. Some Advertising

Can I ask the Chair to please establish a working party to review cases before any revised Enforcement Plan is assessed by Enforcement given its ambition that 95% of cases moving forward will not be investigated?

RESPONSE: The Scrutiny committee has shown an active interest in the work of our planning enforcement team and will continue to keep a keen eye on both KPI's and overall performance. The relevant Cabinet member, Councillor Keable, is also actively involved in the service and the proposed policy is to go before PPAG again prior to re-presentation. I therefore consider there to be no need to establish a working group at this time.

QUESTION 2 – QUESTION TO RICHARD MARSH

I would like a complete response to my question 3 of January explaining the discrepancy in figures quoted to Scrutiny Committee in July versus those recorded at the Department of Levelling Up re Notices.

RESPONSE: As previously advised; there is no discrepancy in figures, rather they relate to two differing time periods.

QUESTION 3

In Jan, Committee was told that planning officers issuing template letters would mitigate having one enforcement officer/300 cases. I asked how many officer hours would be made available. The Authority had no figures. To what extent was this solution explored before being put to Scrutiny?

RESPONSE: As was previously set out; the hours which can be dedicated by planning officers to supporting the work of the enforcement team will necessarily vary according to the number and complexity of planning applications. The measure was implemented as a mechanism to use spare officer capacity to support enforcement work and, as such, is a good use of existing and skilled officer resource. This was understood prior to its implementation.

QUESTION 4

The Authority has been asked to improve their enforcement service by Scrutiny Committee.

How does having one enforcement officer in order to save £35K improve the service?

RESPONSE: The authority is committed to sustaining a dedicated enforcement service whilst managing within its limited financial means. The Council will be seeking to advertise and replace its permanent officer resource within planning enforcement in the near future but we continue to have interim agency cover whilst this happens. However, it is also important to note that all Council services have been seeking to realise savings in order to ensure the Council can achieve in year savings and a balanced budget.

QUESTION 5

The Authority has put forward a revised Enforcement Plan. Is there a reason that the Authority has not clearly identified each of those changes to the Plan for members (ie this is what used to say and this is what it now says) with the impact or benefits of those change explained?

RESPONSE: The draft enforcement plan was discussed with members who had the opportunity to ask questions and raise comment – indeed PPAG recommended its approval. At the point of recommending a revised policy for approval, it is obviously necessary to include a final version of that policy (rather than a marked-up version) to ensure that it is clear what members are considering and approving.

QUESTION 6

Why have the Authority swapped out the Enforcement Plan 2018 that has been on the website for 6 years with a revised version of the same at this point when members will need to compare.

RESPONSE: The current enforcement plan remains on the Council's website.

QUESTION 7

The proposed Plan seeks to drop timelines/targets out of the Enforcement Plan for site visits and investigation periods

How will this result in an improvement to the enforcement service?

RESPONSE: The revised plan seeks to clarify how the service will work in considering planning enforcement matters. It seeks to deliver a policy which is easier to interpret, more reflective of current enforcement practice and policy and which therefore gives greater clarity to the public in terms of what Mid Devon will seek to do. The timescales which are present in the current policy have been removed from the new policy as they are considered to be arbitrary and risk giving false expectations in terms of how quickly the Council will be able to consider some types of alleged breaches.

QUESTION 8

The Authority used to report against the same targets/performance indicators to Planning Committee.

Why was valuable reporting on performance scaled back, and why?

RESPONSE: The 'old' KPI's had not been reported against for some considerable time (2021) owing to staff capacity and workload. The 'new' KPI's are reported to planning committee on a regular basis and are considered to currently give a useful level of detail on workload within the service.

QUESTION 9

The proposed Enforcement Plan states that Low Priority cases will not be investigated when there are other higher priority cases (which is at all times). How will putting in place a plan to cut investigations so significantly improve the service?

RESPONSE: The Council is seeking to balance a desire to deliver a good, discretionary enforcement service whilst also managing within limited financial means. Naturally, this means that the level of resource directed to planning enforcement is finite and resources are therefore naturally directed to those cases which are considered to be of highest risk, most urgent and where the greatest risk of harm arises. This is a pragmatic and reasonable approach.

QUESTION 10

The proposed Plan seeks to drop the Highest Priority category How will this result in an improvement to the service?

RESPONSE: The notion of having 'high' and 'highest' is not considered to add value as all 'high' priority cases will naturally be prioritised by the service and officers.

QUESTION 11

The Plan places Breaches of Condition that are not impacting residential amenity or trees in the low category and therefore not being investigated. This undermines those "necessary" Conditions and is a green light for non-compliance by developers?

RESPONSE: The LPA does not in any way condone non-compliance with planning conditions and expects all developers/applicants to abide by the terms of planning permissions. Where they do not, enforcement action will be considered in line with policy.

Response from the Director of Place and Economy

QUESTION 12

The Authority suggests the revised enforcement plan is similar to East Devon's. The East Devon plan has timelines, targets and a commitment to investigate low/med/high breaches. Does the Authority, therefore, accept that the two approaches/services are chalk and cheese?

RESPONSE: The policy is substantively based upon the East Devon policy but has been considered and refined by officers, with member input, and a revised policy set out for consideration. Obviously, further to the recent Scrutiny meeting, there is now an opportunity for further member input.

Paul Elstone

Question 1

My question relates to the Scrutiny Committee Workplan and concerns MDDC Pay Policy

A question I asked at Cabinet on the 6 February 2024 was worded along these lines: *"How can the grossly excessive pay increases of circa £24,000 or 33 percent and by circa £18,000 or near 21 percent be considered, in any circumstances, a decision that would not stand up to any scrutiny in private business".*

When the Cabinet debated then voted to approve the proposed pay policy changes there was obvious unease. This resulting it is believed the Cabinet Member for Finance voting against the proposal and both of the Deputy Leaders abstaining.

It was evidenced that other Members did not support the proposals.

It is on record that the Council Leader in part justified these gross salary rises based on them being new Job's.

In the real business world being new jobs, there would be high level scrutiny including performance and competency check requirements. This given the magnitude of the role and salary changes. That the jobs would be externally advertised to see if there are better candidates.

Therefore, will this Scrutiny Committee fully investigate/scrutinise the merits or otherwise of the salary rise proposals?

Response: As indicated, this question was asked at Cabinet. The response provided by the Leader was: These changes represent a saving to the council of over £45,000 and I thank the officers in question for taking on these new roles and responsibilities, so that we can continue to ensure we are running the council in the most efficient way possible.

Response provided by the Chief Executive

Question 2

Can the Solicitor and Monitoring Officer please detail what is this Council's legal position when the perpetrator of a planning breach is shown beyond any doubt as providing repeated false and misleading information to the Council in support of avoiding enforcement? This for substantial financial gain.

Response: When considering planning enforcement matters, the Council will, if a breach is apparent, seek information from any owner or occupier of the land. A Planning Contravention Notice (PCN) can be issued which will instruct the recipient to provide the LPA with requested information for enforcement purposes.

Failure to comply with a PCN is an offence, as is knowingly and/or recklessly making false or misleading statements. The penalties on summary conviction are currently £1000 & £5000 respectively.

The Council will always be mindful of this when considering any information pertaining to planning enforcement matters.

Response from the Director of Place and Economy

Question 3

I has been stated by the Scrutiny Committee Chair that and I quote "*we will bring Enforcement up to scratch in the next 12 months*".

At a Cabinet Meeting in June 2016 and in a report about Planning Enforcement Improvement and a report prepared by the current MDDC Chief Executive. Many of the things said then and proposed now are the exact same.

That rather than seeing any improvements the enforcement situation has gone backwards.

So, what is different given the same Executive Management and same if not much bigger problems? The public need to see tangible results.

Therefore, why should the Scrutiny Chair's statement be believed?

Response: The Council chooses to employ dedicated enforcement staff despite the fact it is a discretionary, non-fee earning service and at a time when the Council faces ongoing and significant financial pressures. This therefore demonstrates the Council's clear commitment to providing a robust enforcement service.

It is unfortunate that the Council is currently in a position of not having any permanent enforcement staff, but the Council has successfully recruited an agency enforcement officer to ensure that work continues whilst we again seek to recruit permanent staff.

The Council will also continue to work to ensure that the enforcement service returns to a sustainable position in order to implement planning enforcement in line with the new enforcement policy, once duly adopted.

Response from the Director of Place and Economy

Sarah Coffin

My questions relate to Agenda Item: 11 – Enforcement.

Unfortunately, the Enforcement review merely reaffirms my own experiences from decades of interaction with this Council; Mid Devon pays lip service to providing a democratic and balanced Planning administration. All the proposed changes would do was ensure the enforcement waiting list continues to grow but in an orderly catalogued manner.

Given the declared importance of Enforcement issues within the Report is there an independent allocation within the budget, for Enforcement, or does it get included within the general Planning costs?

Response: The Council provides for enforcement officers within the establishment – hence these are posts which are separate and distinct from planning officer roles.

Response from the Director of Place and Economy

If the latter, I am sure Councillors will agree that intelligent and correctly worded Planning Approvals become even more imperative and can only be achieved via inclusive rather than selective assessment of all relevant facts?

Are Councillors aware that the Enforcement Notice EP/21/090/AN, served on 15 December 2021 by this Council, for the placement of an effective cover on a slurry/digestate pit, to prevent harmful organic emissions invading nearby homes; is still not in place?

Response: We can confirm that the notice EP/21/090/AN was complied with as the Farm installed an aggregate based floating cover. This notice has now been superseded and part of the current notice is to continue to ensure that a suitable cover is installed and maintained. The Council has been notified that a new Hexa cover is due to be installed.

Response from the Director of Place and Economy

Do Councillors appreciate that during this long delay caused by repeated broken promises, affected neighbours have been and are still subject to the risks of long time exposure; to what are acknowledged as hazardous emissions detrimentally affecting their wellbeing?

Response: As set out; the previous notice was complied with and it is considered that this addressed any odour issued arising from the pit.

Response from the Director of Place and Economy

In view of time passed, investigation costs incurred (2017/18) by all relevant health/emergency/regulatory agencies and Scrutiny Committee, into complaints of fissured tongues, breathing difficulties, eye irritation, heart problems and digestion issues; why has Mid Devon not prosecuted the offending farmer/AD operator for non-compliance or fitted an effective cover on his behalf and claimed full reimbursement, as is permitted via the Environment Act?

Response: All complaints and concerns as above have been fully investigated. Due to there being a number of abatement notices served over the years, we recently reviewed and served a new single notice to ensure clarity and avoid a confusing compliance picture for the operator and residents alike. We continue to monitor compliance with the notice for any breaches and, as set out above and as a consequence of Council action, a new, improved cover is expected to be installed shortly.

Response from the Director of Place and Economy