

REPORT OF: STEPHEN WALFORD, CHIEF EXECUTIVE

PLANNING AND ENFORCEMENT SERVICE - ASSESSMENT AND IMPROVEMENT REPORT

Cabinet Member Cllr Richard Chesterton
Responsible Officer Stephen Walford, Chief Executive

Reason for Report: The Chief Executive was asked by the Council's Scrutiny Committee to investigate the efficacy and effectiveness of the Planning Service, with particular reference to the way enforcement is carried out and how members are engaged with the work of the council in this service area.

RECOMMENDATIONS:

That:

- 1. The Head of Planning & Regeneration brings forward the Local Enforcement Plan for Cabinet to consider as a matter of priority to set the framework for enforcement activity at MDDC.**
- 2. The Head of Planning & Regeneration ensures that staff within the enforcement service are invested in through additional training to help provide them with the necessary confidence about sharing information with members (with reference to Data Protection Act constraints).**
- 3. The Head of Planning & Regeneration take steps to appoint additional resource specifically into the enforcement team to clear any real or perceived backlog, and that consideration is given to the merits of operating this service as a discrete entity to share knowledge, expertise and resource (as opposed to the current area-based model).**
- 4. The Head of Planning & Regeneration ensures that 'Part II' reports are only ever brought as an exception in order to maintain transparency as far as Data Protection rules allow.**
- 5. The Chief Executive, in conjunction with the Head of Planning & Regeneration and the Head of Communities & Governance, considers setting a target for the processing and completion of S106 agreements.**
- 6. The Head of Communities & Governance considers reviewing (in conjunction with the Head of Planning & Regeneration) whether the current legal expertise available in-house is appropriate to process planning matters swiftly, and to take steps to re-provision this as opportunity permits.**
- 7. The Cabinet Member for Planning & Regeneration considers a report investigating the introduction of S106 Monitoring Fees in order to adequately resource the level of required activity.**
- 8. The Chief Executive considers the value of instructing Internal Audit to look at this area before the end of 2016/17 in order to explore further opportunities for service improvement and efficiency.**

9. That local performance indicators for the enforcement service are set and are reported quarterly to the Planning Committee.
10. That Members are provided with a suite of reports on planning enforcement cases on a monthly basis, and are reported to Planning Committee quarterly.
11. That the Planning Committee considers the level of delegation that exists in relation to enforcement activity.

Relationship to Corporate Plan: The primary purpose of the planning system is to regulate the use and development of land in the public interest and be a positive force in protecting what is good in our environment and preventing what is unacceptable. The Planning Service is a statutory service, the effective operation of which is central to the delivery of Corporate Plan priorities of community, housing, economy and environment. The Local Development Plan sets out the strategy and approach to development in the district, together with community and environmental safeguarding / enhancement until 2026.

Financial Implications: The net budget for the Planning Service for 16/17 has been set at £493,000 with expected income from applications and other sources of £834,000. Activity by the Planning Service also directly results in the award of New Homes Bonus from the government.

Legal Implications: National Planning Policy Framework 'The purpose of planning is to help achieve sustainable development. Sustainable development is about positive growth, making economic, environmental and social progress for this and future generations.' The same document advocates a positive approach, with planning taking an enabling role.

The Service operates within a highly regulated environment which has been, and continues to be, subject to significant Government changes. The Planning Service including the enforcement of planning control must operate within the legal and performance parameters established through legislation, case law and Government performance indicators, but should also command public confidence in the system. The operation of the Planning System will by its nature often involve making difficult decisions that will not be universally supported within the community.

Risk Assessment: The operation of the Planning Service is by its nature open to what can be high levels of public scrutiny with potential for challenge. It must operate within legislative constraints. The Government is currently seeking to accelerate the delivery of housing and continues to make changes to the planning system to achieve both this and wider aspirations of increasing the speed of decision making. The Government has also recently published its intention to open up the assessment of planning applications to alternative providers on a pilot basis. This may indicate a wider intention to introduce competition into elements of the planning system.

The Local Planning Authorities are expected to operate in a reasonable way, in accordance with statutory requirements and Government guidance. There is an expectation that the Council will be able to justify its decision making. Risk in relation to planning arises from lack of an adopted and up to date development plan, lack of a five year land supply, departure from legislation and guidance, as well as an inability to justify and evidence decisions.

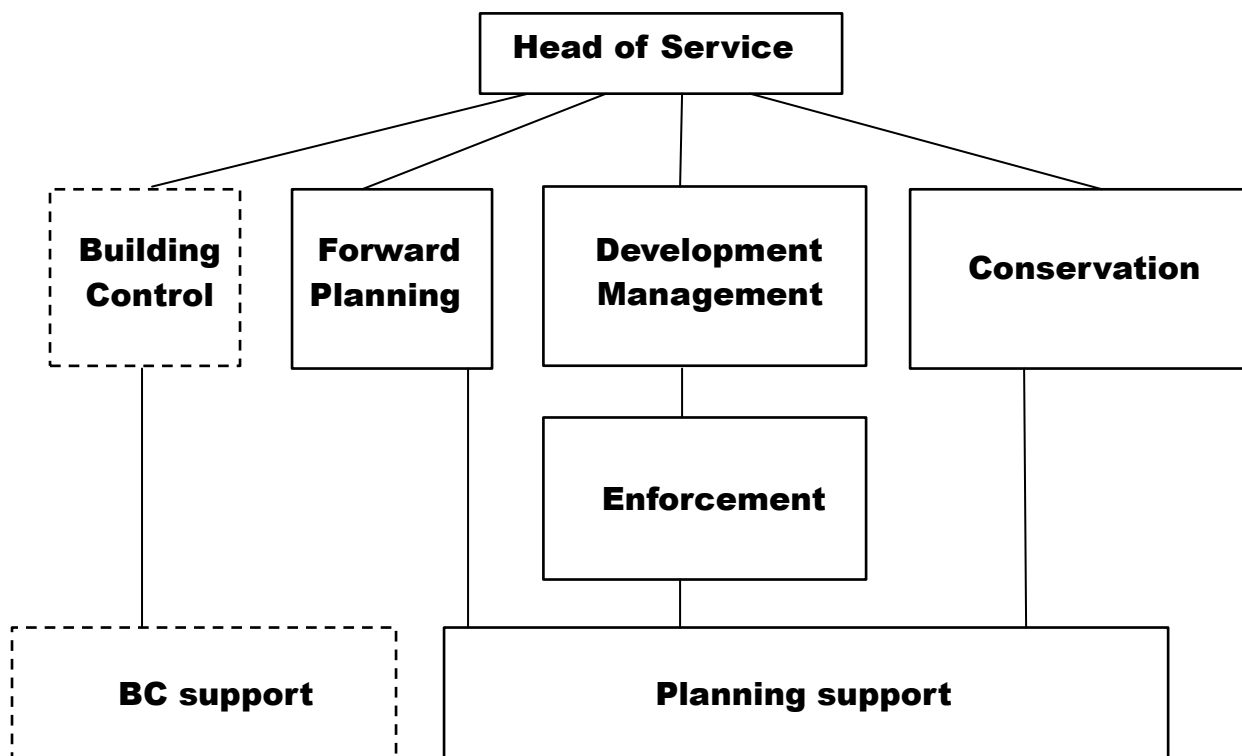
INTRODUCTION

1.1 Having been asked to undertake an assessment of the Planning and Enforcement service, the Chief Executive has carried out an initial review, as described below.

2.0 CONTEXT – OVERVIEW OF THE SERVICE AND ITS OPERATION

2.1 The purpose of the planning system as set out in the National Planning Policy Framework and therefore of the service is to: ‘to help achieve sustainable development. Sustainable development is about positive growth, making economic, environmental and social progress for this and future generations.’ The same document advocates a positive approach, with planning taking an enabling role. The Planning Service has a key role in realising Corporate Plan priorities of economy, homes, community and environment, primarily through delivering on the strategy and policies as set out in the Local Plan.

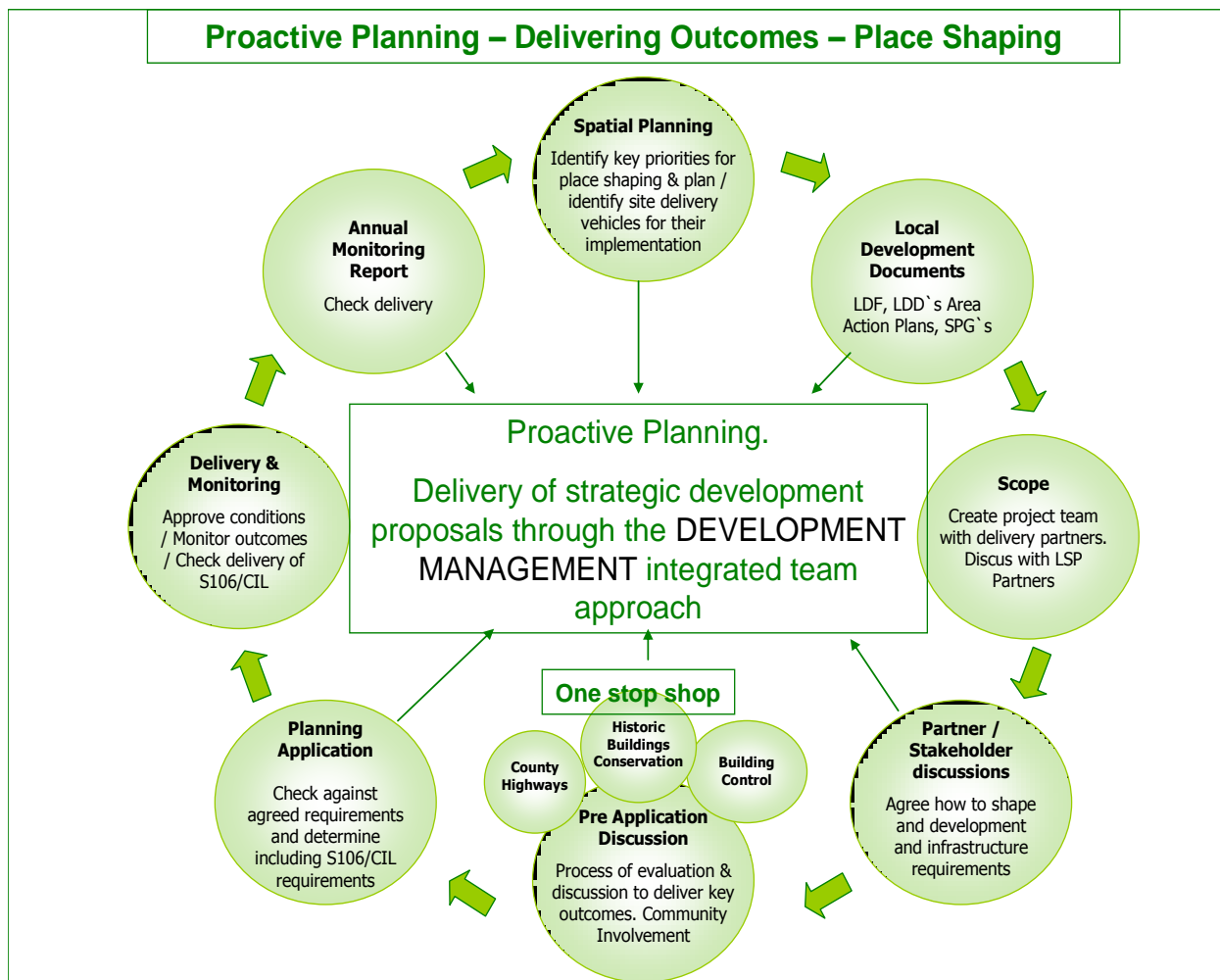
2.2 The Planning Service comprises the following elements: Forward Planning and Conservation, Development Management and Enforcement. Whilst the Building Control service forms part of the planning service from an organisational structure perspective it is subject to separate legislative requirements. Cabinet has also agreed the investigation of a future Building Control service operation in partnership with North Devon Council. It is therefore not included within the scope of this report. The service is currently structured as follows:



2.3 The service staffing (full time equivalent) is 27.85. At the time of writing this report there are several vacant posts within Development Management and for 1 FTE Enforcement Officer. A structure chart (December 2015) is attached at **Appendix 1**). Since then, a further Area Planning Officer post in Development Management has been created to increase capacity at a senior

level. The service operates within a series of smaller teams. The development management part of the service that conducts pre-application discussions and assesses formal applications operates within a team structure that is geographically based. Similarly the Conservation Officers and Enforcement Officers work primarily to geographical areas. The Development Management part of the service is currently operating with 10.2 FTE case officers, of which 0.8 FTE deals with the Tiverton Eastern Urban Extension.

- 2.4 The budget for the Planning Service in 16/17 is £493,000, with expected income from applications and other sources of £834,000. Applications for development are, in the main, subject to fees that are set by Government regulation. It is nationally recognised that planning fees do not fully cover the cost of processing such applications. Whilst locally-set fees to fully reflect the cost of the service have been considered by the Government, there appears to be no intention to bring this in within the immediate future. Recent changes to the planning system have also seen the increase in permitted development rights that have resulted in a reduction in planning applications received, but more prior notifications, for which there is a lesser fee, but similar levels of work. On a local discretionary basis, the Council operates a chargeable pre-application advice service (this element of the service is not statutory) and increasingly looks to enter into planning performance agreements with developers within which the Council will look to cover its costs for providing this level of service.
- 2.5 Planning fees are set nationally and do not cover the cost of delivering the planning service. Therefore, in order to ensure that the necessary staff resources can be deployed to deliver the service that applicants want, and that members and the public expect, the challenge in this service area is to encourage pre-application discussions so that when applications do arrive they are of a quality that minimises the amount of officer time required post-receipt (this is also essential in order to meet government targets on processing times). In addition to this, major applications should be encouraged to enter into Planning Performance Agreements (PPAs) to provide a mutually-beneficial framework for progressing the consideration of an application alongside the resourcing necessary to meet an agreed timetable (PPAs agree a process/timeline, NOT an outcome.)
- 2.6 Unlike Building Control, the consideration of planning applications is not open to competition. However the Government is to pilot allowing alternative service providers to process (not determine) applications on a cost recovery fee basis. This may indicate a future direction of travel and see councils and other approved providers being able to process applications in other council areas.
- 2.7 The following diagram illustrates the development process in respect of parts of the planning service, from spatial strategy and policy formulation via development plans, to pre-application discussions, formal application consideration (via committee or delegated), delivery, enforcement and monitoring.



- 2.8 There is an interrelationship between the service and others in the Council, in respect of synergies with other corporate strategies such as housing provision and economic development. In addition the planning service relies upon Legal Services for the drafting and issue of S106 agreements, formal enforcement action paperwork, as well as legal support for planning appeals and court appearances. Other services also provide consultation responses on planning and other applications.
- 2.9 The service has been the subject of ongoing Government change in terms of legislative requirements. Further changes are expected with the main Government emphasis being upon accelerating the delivery of housing, the relaxation of control (for example with greater permitted development rights) and increasing performance management targets aimed to speed up the system.
- 2.10 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. The enforcement of planning control is not subject to national performance targets in the same way as the determination of planning and other applications.

3.0 TARGETS AND WORKLOAD.

3.1 In the last 3 years the number of applications dealt with by the council is as set out below.

	2013	2014	2015
Total applications	1136	1484	1110
Majors	33	28	27
Minors	400	392	374
Others	600	905	512
Prior notifications	-	89	164
Certificate of lawful use Notifications	53	37	6
	44	33	27

Further work is associated with giving pre-application advice.

3.2 There has been an increasing trend over the last couple of years for the relaxation of permitted development rights. This has resulted in a reduction in the development requiring planning permission and hence the overall number of planning applications received. However it has also led to more applications to establish if prior approval is required and an increase in prior notifications. This can involve similar levels of work to the assessment of a planning application, but with the receipt of a lower fee.

3.3 Targets related to processing planning applications deal generally with time taken to determine. National performance targets are:

- 60% of majors applications determined within 13 weeks.
- 65% of minor applications determined within 8 weeks.
- 80% of other applications determined within 8 weeks.

Additional performance requirements over speed and quality of decision making are:

- SPEED: More than 50% of major applications determined within a rolling 2 year period to be determined within 13 weeks.
- QUALITY: Of all major applications determined within a rolling 2 year period, no more than 20% to be overturned at appeal.

3.4 The Government has also introduced the 'planning guarantee'. All planning applications are to be determined within 26 weeks of validation (or such extension of time as may be agreed with the applicant). Failure to adhere to this leads to the return of the planning fee to the applicant.

3.5 Activity within the enforcement part of the service 15/16 is set out below:

Enforcement 2015/16	Qu 1	Qu 2	Qu 3	Qu 4
New enforcement cases registered	14	71	54	83
Enforcement cases closed	47	53	39	62
Committee authorisations sought	3	2	1	2
Planning contravention notices served	Data	9	5	10

	available from Qu 2			
Breach of condition notices served	0	1	0	0
Enforcement notices served	2	1	0	3

Comparison with other authorities in Devon for the issue of different types of enforcement related notices in 2015 is attached at **Appendix 2**.

3.6 The number of open pending enforcement cases where investigation is in progress at the time of writing this report is 179. This does not include cases where formal action is in progress. Cases opened in 15/16 exceeded those closed by 21. The number of new cases opened in quarter 1 was abnormally low due to the introduction during that quarter of more comprehensive recording of new cases. Previously many cases where there was found to be no breach or were resolved swiftly without formal action were not recorded on the system. This did not reflect the full extent of work undertaken by the enforcement team.

3.7 A temporary senior enforcement officer has been appointed on a short term contract until a permanent appointment can be made to the current vacant post in enforcement.

4.0 PERFORMANCE.

4.1 A report to Planning Committee 11th May 2016, on planning performance 15/16, established that the service has met Government performance targets as well as the majority of local performance indicators. The table at **Appendix 2** shows 2015 performance in relation to both England and other Devon authorities. The table below indicates performance against national and local targets for the last 3 financial years and shows an upward trend in performance against these indicators.

Planning Service Performance	Target	2013/14	2014/15	2015/16
Major applications determined within 13 weeks	60%	37	64*	47%* (87%)
Minor applications determined within 8 weeks	65%	54	67	68%
Other applications determined within 8 weeks	80%	77	78	86%
Householder applications determined in 8 weeks	85%	88	90	93%
Listed Building Consents	80%	71	70	71%
Enforcement site visits undertaken within 15 days of complaint receipt	87%	89	94	89%
Delegated decisions	90%	93	95	94%
No of applications over 13 weeks old without a decision	Less than 45 applications	50	36	40
Major applications	More than	Not	50	53%

determined within 13 weeks (over last 2 years)	50%	reported		
Major applications overturned at appeal as % of all major decisions in last 2 years	Less than 20%	Not reported	14%	10%
Determine all applications within 26 weeks or with an extension of time (per annum –Government planning guarantee)	100%	Not reported	95	99%

*Important note on major application statistic reporting: The 47% statistic for major applications determined within 13 weeks reported above includes all major applications and does not take into account any extensions of time agreed with the applicant or planning performance agreements (PPAs) that have been entered into. Government instructions to Councils over this performance target remove reporting applications with extensions of time or PPAs from this target as they are reported separately. Once these have been removed 87% of major applications were determined within 13 weeks compared with the target 60%. This performance target has therefore been met.

- 4.2 All national performance targets were met in 2015/16 together with the majority of local performance targets. However the Government has indicated an intention to introduce new targets in relation to speed and quality of decision making for non-major applications. The existing target on the quality of decision making (major applications) is proposed to be tightened. The performance environment within which the Development Management part of the service operates is therefore becoming more challenging, particularly against the background of financial constraint.
- 4.3 Unlike other areas of the service, there are no national enforcement performance indicators. However some councils do set local standards for measuring the delivery of the enforcement service. In Mid Devon, the only enforcement performance indicator currently measured is the percentage of site visits undertaken within 15 days of complaint receipt (the target is at least 87% completed within that time period).
- 4.4 The introduction of a suite of meaningful and measureable performance targets for enforcement should be actioned urgently. Investigation has indicated that national enforcement performance in Wales is measured against:
- Percentage of enforcement cases investigated (determined whether a breach of planning control has occurred and if so, resolved whether or not enforcement action is expedient) within 84 days.
 - Average time taken to investigate enforcement cases (days)
 - Percentage of enforcement cases where enforcement action is taken or a retrospective application received within 180 days from the start of the case (in those cases where it is expedient to enforce).
 - Average time taken to take enforcement action.

Other performance targets for consideration are:

- Issue instructions to Legal within 10 days of Committee resolution (target >90%).
 - Close 80% of cases within 12 weeks of complaint receipt.
- 4.5 It is also important that the number of cases opened, number closed and number of open cases is tracked. Time taken within the Legal Service to serve notices following receipt of instructions should also be subject to comprehensive tracking as this is a potential source of delay.
- 4.6 The Legal Service also directly impacts upon planning performance in time taken to draft and complete S106 agreements. More use should be made of standard clauses in order to deliver efficiencies and reduce delay. Target setting for the completion of S106 agreements should also be considered. The Government has indicated an intention to require the completion of S106 agreements within the life of the planning application (8/13 weeks). Sufficient staff resources are required in the Legal Service to deliver these. A new Planning Solicitor post is currently being recruited to.
- 4.7 Within enforcement specifically, the council should be triaging enforcement activity and, for those within the most severe category of breach, it should be taking all necessary steps to recover costs through the courts wherever possible. Consideration should also be made on a case by case basis for recovering the financial benefit to the contravener arising from the planning breach via use of the Proceeds of Crime Act.
- 4.8 Enforcement service standards are set out in the Enforcement Policy Statement dated 2005. This document should be reviewed and incorporated into a Local Enforcement Plan and up to date service standards issued. The adoption of a Local Enforcement Plan setting out the council's approach to the enforcement of planning control, and prioritisation of cases should be actioned urgently. It is recognised that the enforcement of the planning service must have the confidence of the public and members that breaches will be investigated and appropriately addressed using the tools available.
- 4.9 There will always be a gap between Member's (or public) expectation or aspiration of enforcement activity and what the service actually delivers. In part this is due to Government guidance on planning enforcement: that it is discretionary (rather than an automatic requirement), is required to meet a public interest test and that it must be expedient to do so. Furthermore, Government guidance makes it clear that where a breach of planning control would receive planning permission if applied for, enforcement action would be inappropriate. Action is also required to be proportionate to the breach. Day to day operation of the planning enforcement service therefore requires on a case by case basis an assessment of the nature of the breach, its significance and hence the priority to be assigned to its investigation and any subsequent action together with whether action is appropriate.
- 4.10 The gap between expectation / aspiration and service delivery can widen as a result of the limited resources available to deliver the service. Proactive monitoring of all planning conditions may be desirable and is often expected by the public, but is not deliverable within the resources available.

5.0 COMMUNICATIONS AND CONFIDENTIALITY.

- 5.1 Members rightly have an expectation of being kept informed on matters of interest or significance within their ward or, with higher profile issues, across the district as a whole. Within the enforcement service this may be achieved via several means: the establishment of regular alerts on cases opened, closed and on hand, together with quarterly reporting to Planning Committee. In conjunction there is an expectation that ward members are kept apprised of complaint investigation and outcome.
- 5.2 There are aspects of the work of the enforcement team that require confidentiality under the terms of the Data Protection Act 2000. Such confidentiality is associated with personal data. Enforcement staff treat the identity of the complainant as confidential in order to safeguard the operation of the system and give confidence for breaches to be reported without risk of reprisal or intimidation. To date, details of live cases under active investigation where formal action has yet to be authorised are not released publically until such time as reported to Planning Committee. However this does not prevent members being kept apprised of live cases. Research on practice amongst other councils shows a lack of consistency. Some consider all enforcement cases confidential until reported to Planning Committee, whilst others list cases on their website (with care over what details are revealed). Clarity of approach is needed following consultation with the council's senior information risk owner (SIRO).
- 5.3 There is a balance between an individual's rights under the Data Protection Act and the rights of Members to have access to information pertaining to the running and operation of the Council. Sensitive information such as enforcement information, if provided to members, would not usually contain personal information. If it is the ward member **and they have completed the Data Protection Policy training** then, if necessary for them to carry out their duties, they can receive the information including personal information. Member training for data protection covers awareness of obtaining personal information inappropriately and likewise disclosing personal information and the relevant monetary penalties.

6.0 BENCHMARKING OF ENFORCEMENT ACTIVITY.

- 6.1 In accordance with the resolution of Scrutiny Committee from the meeting on 22nd February 2016, a benchmarking exercise on planning enforcement in Mid Devon against other local authorities in the region has taken place and is set out in the following tables:

Staffing

Local Authority	FTE Planning enforcement staff
DEVON	
Mid Devon	2.5
North Devon	2.6
Torrige	2
Torbay	1
Teignbridge	2

South Hams & West Devon	3.5
East Devon	3
Exeter City	0 (Dealt with by Planning Officers)
Plymouth City	2
SOMERSET	
Taunton Deane & West Somerset	2
South Somerset	1 compliance officer + dealt with by Planning Officers
North Somerset	5 enforcement, 0.6 technical officer, 0.4 planning assistant
Sedgemoor	2

6.2 As can be seen from this table, Mid Devon broadly compares with the level of staffing resource in place at other local authorities (it should be noted that North Somerset is a unitary authority and therefore has a much broader range of enforcement responsibility/activity).

Delegated Authority

6.3 Complete delegated authority exists in some local councils to undertake enforcement action. Others have delegated 'householder development' related enforcement. Compared with the 6 other councils where information on this aspect has been received, more extensive delegated authority for enforcement action exists compared to that which is in place at Mid Devon. Members of the Planning Committee may wish to review this in the future.

Contact for more Information:

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Circulation of the Report: All Members

List of Background Papers:

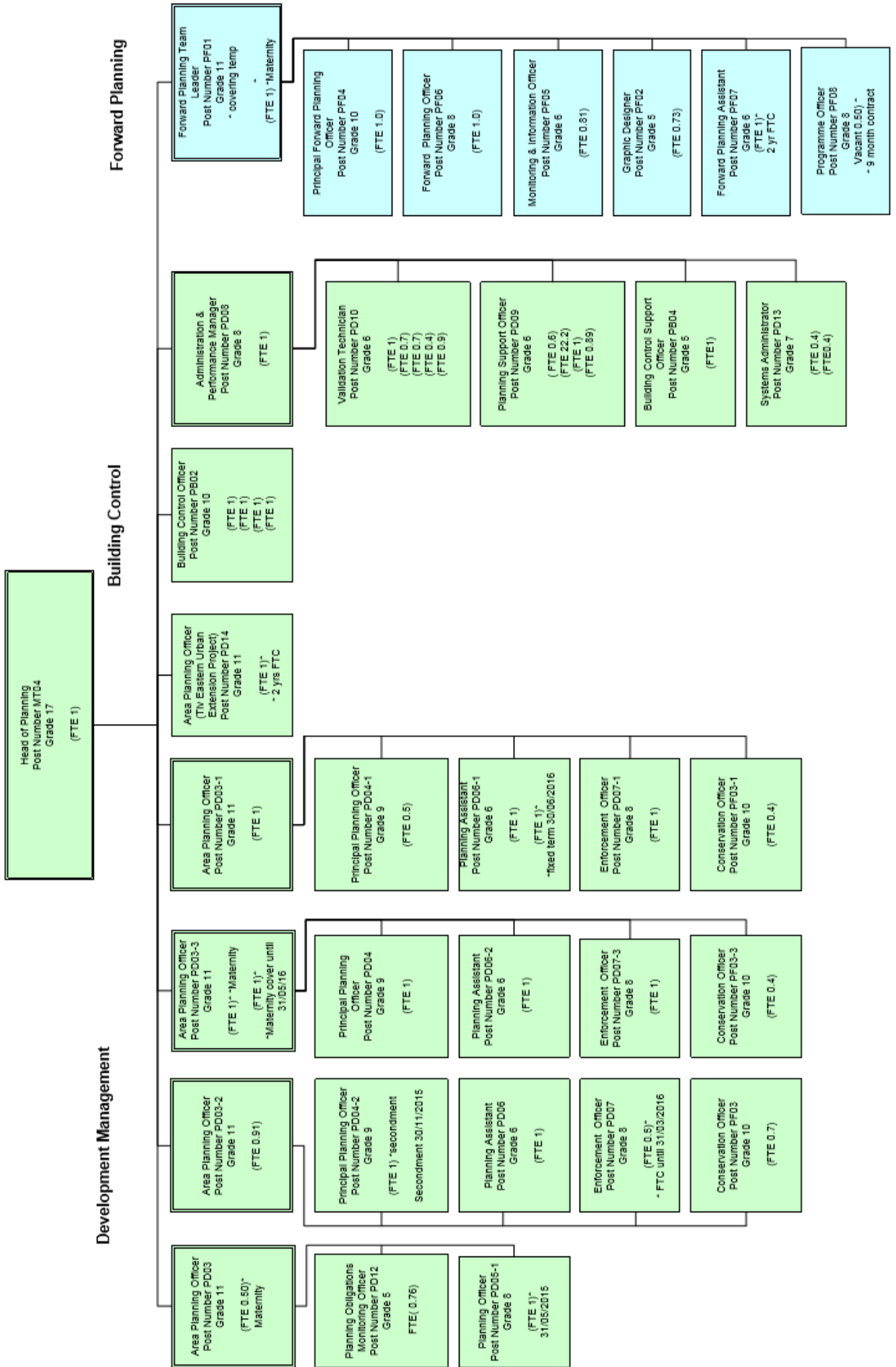
Item 129 of Scrutiny Committee dated 22/02/16 provides the context:

<https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=131&MId=406&Ver=4>

Planning Committee 11th May 2016 Planning Performance 15/16

<https://democracy.middevon.gov.uk/documents/s5533/Performance%20Report%20201516.pdf>

Planning & Regeneration



Appendix 2

Table P130: District planning authorities¹ - Enforcement action, by local planning authority
 England, Year ending December 2015^P

Planning authority	Enforcement Notices issued	Stop Notices issued	Temporary Stop Notices issued ²	Breach of Condition Notices served	Contravention Notices served	Planning Notices served	Enforcement injunctions granted by High Court or County Court ³	Enforcement injunctions refused by High Court or County Court
England	5,146	148	252	871	5,053	40	-	
Mid Devon	3	-	-	1	24	-	-	
East Devon	4	-	-	2	-	-	-	
Exeter	1	-	1	-	3	-	-	
North Devon	12	-	-	-	24	-	-	
South Hams	2	1	-	5	3	1	-	
Teignbridge	7	-	-	2	10	-	-	
Torridge	14	-	1	-	18	-	-	
West Devon	4	-	-	3	1	-	-	
Plymouth	19	-	-	-	3	-	-	
Torbay	-	-	-	-	3	-	-	