

Report to: **Overview and Scrutiny Panel**  
Date: **5 September 2019**  
Title: **Planning Enforcement Plan Review**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: Recommendation(s) to the Executive meeting on 19 September 2019 and the Council meeting on 26 September 2019

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#### **Recommendations:**

**That the Overview and Scrutiny Panel RECOMMEND to the Executive that:**

- 1. the updated Enforcement Plan (as outlined at Appendix B), the Harm Assessment Matrix (as outlined at Appendix D) and the proposed Enforcement Action Plan (as outlined at Appendix C) be approved; and**
- 2. Council be RECOMMENDED that the additional two permanent staff for Planning Enforcement be approved as set out in paragraph 3.3, to be funded from the Planning Earmarked Reserve in 2019-20 and to be built into the budget setting process as a cost pressure for 2020-21 onwards.**

#### **1. Executive summary**

- 1.1 A Planning Enforcement Plan and a Member Engagement Protocol were approved at the meeting of the Executive 1 February 2018 (Minute E.60/17(a) iii)

- 1.2 This report provides a review of performance following the implementation of the Local Enforcement Plan together with proposed outputs set out in section 3.
- 1.3 The issues for consideration are the growth in the volume of planning enforcement complaints, the numbers of open planning enforcement cases and the provision of an adequate response to complainants. The recommendations include changes to working practices and an increase in the establishment to address the growing level of demand and improve the customer experience.
- 1.4 The Planning Enforcement Service is a highly visible public facing asset and is instrumental in the Council's efforts to maintain public confidence in the effectiveness of the planning system.
- 1.5 Officers have successfully served a variety of formal notices, carried out criminal prosecution of offenders, secured important heritage assets, stopped unauthorised development and negotiated satisfactory outcomes in many cases. Most of this work goes unseen by the general public but the reputational risk created by service failure is ever present.
- 1.6 There is no such thing as a straightforward planning enforcement case. By necessity investigations involve intrusion into the private lives or business affairs of those who are the subject of the complaint. Resolution often involves sensitive negotiation which is frequently protracted in nature. Cases are complicated by human factors and many are found, after investigation, to be motivated by personal dispute rather than material planning considerations.
- 1.7 It is acknowledged that the current performance is below the targets set out in the adopted Enforcement Plan and, given the volume of cases received, additional staff resource is required to deliver a good standard of service across all cases received.

## **2. Background**

- 2.1 At the joint meeting of the O&S Panel and Development Management Committee in January 2018, Members were presented with a report that set out how the Planning Enforcement Service would assess and prioritise cases. The report explained how the number of open cases was slowly reducing as a result of resource levels being reviewed and how the Enforcement Plan, proposed as part of the report, would support the team in providing an efficient and effective service.
- 2.2 This report presents a current review of the performance of the Planning Enforcement team, as requested by Members when the previous report was presented.
- 2.3 When measured against the targets set in the Planning Enforcement Plan, cases classified as emergency or higher priority have

consistently achieved 100% success against the targets since recording began. However, in relation to lower priority cases, two out of the three measured outputs, being site visits and complainant updates, do not meet the targets.

- 2.4 The target for site visit attendance in lower priority cases is 80% carried out within 20 working days. When looking at monthly performance in South Hams this target has been exceeded on 3 occasions since January 2018. Quarterly performance has consistently been 10% below the target. In West Devon the target has been reached during one month with the best quarterly performance of 68.75%.
- 2.5 According to the Enforcement Plan, the target for first contact with the complainant is 80% within 30 working days. In South Hams this has been exceeded during 3 months however the best quarterly performance was 64.29%. In West Devon the target was reached during one month with the best quarterly performance at 56.52%.
- 2.6 To understand why the service is not achieving the targets set as part of the Enforcement Plan, it is important to assess the level of demand. The number of open Enforcement cases in January 2018 was 564, 350 in South Hams and 214 in West Devon. As of 12<sup>th</sup> August 2019, the total is 731 with 513 in South Hams (46% increase) and 228 in West Devon (6% increase). The data reveals growing customer demand in the number of reports. Comparison of Q2 2018 data with Q2 2019 indicates that there were over 60 more reports of low priority cases and 10 more high priority cases received.
- 2.7 In addition to the increased number of reports, there are other factors that are generally accepted as having an adverse affect on performance: geographic sparsity, competing demands of enforcement officers(urgent cases take priority), and the competing demands of Mobility Locality Officers who are used to support the team by undertaking initial site visits.
- 2.8 In respect of the competing demands of enforcement officers, there have been a number of high profile cases that have been and will be the subject of criminal prosecution. The level of work required to prepare for such cases is significant, and naturally diverts officer time away from lower priority cases. In 2018 and as a result of a Planning Enforcement Service investigation, 3 persons were convicted at Magistrates Court of TPO offences and significant fines and costs were imposed. There are still several ongoing complex investigations which compete for resources with the growing number of general cases. Robust investigation of criminal allegations, especially when combined with successful prosecutions, enhances public confidence in the Council and the planning system which is a highly valuable outcome.
- 2.9 The provision of a robust Planning Enforcement Service supports our commitment to the National Planning Policy Framework (NPPF).

Customer service is a key organisational priority and the recommendations set out in this report support that ethos and our aspirations.

- 2.10 This issue affects our communities and our partners with whom the Planning Enforcement Service has frequent contact, these include Devon County Council, the Environment Agency, Historic England, Natural England, the Police as well as internal stakeholders.

### **3. Outcomes/outputs**

- 3.1 Clearly, whilst the resource levels in 2018 initially led to a reduction in case numbers, the increase in demand for the service has resulted in targets not being met.
- 3.2 Planning enforcement is a high profile service, and whilst the success of high profile prosecutions can demonstrate that the Council will take breaches seriously, there is a negative knock on effect in that lower profile cases may not be dealt with within target timescales.
- 3.3 To address the increased level of demand, enable officers to work to the timescales within the Enforcement Plan and maintain confidence in the service, additional resource will be required. It is requested that two additional, permanent Enforcement Case Managers be approved to join the existing team of five planning enforcement officers (4.6 FTE). These will be at Level 6 and will be additional officers who investigate the complaints. These two posts combined would cost a maximum of £71,538 pa at the top of the scale. This would be shared 70:30 South Hams:West Devon and therefore the cost for South Hams would be £50,078 pa. It is requested that these appointments are made within this financial year as deferring to the next financial year would delay dealing with a number of the existing cases. The two posts are recommended to be funded from the Planning Earmarked Reserve in 2019-20 and if approved, to be built into the budget setting process as a cost pressure for 2020-21 onwards. The Council achieved additional planning income of £308,000 more than the budgeted income of £849,000 for 2018-19. Of this extra income, £30,000 of the additional planning income received was transferred to the Planning Earmarked Reserve, to support peaks and troughs in the planning service.
- 3.4 Should the request for two permanent staff be approved, officers are confident that the Planning Enforcement team will achieve success in dealing with reported cases within the time limits prescribed in the Enforcement Plan.
- 3.5 Success will be achieved when all of the KPIs set out in the Enforcement Plan have been achieved in every reporting quarter during a reporting year.

- 3.6 Success will be measured against the 3 KPIs set out in the Planning Enforcement Plan at Appendix 1. These relate to registration and allocation, site visits and complainant updates.
- 3.7 In addition to reviewing resource levels, officers have produced an Enforcement Service Action Plan which proposes alterations to working practices that will further improve the ability of officers to meet service targets set in the Enforcement Plan.

#### **4. Options available and consideration of risk**

- 4.1 Alternatives are available because planning enforcement is a discretionary activity. The Council could decide not to investigate anything except those cases that involve potential criminality, listed building and Tree Preservation Order cases. However that option would undoubtedly receive a negative reaction from the public.
- 4.2 Another option is to make no changes to resources and continue as we are and try to improve performance by refocussing existing resources on processes to meet targets. That redirection of input may positively influence output but will not alter outcomes in terms of case resolution.
- 4.3 It should be borne in mind that the introduction of targets was something new for the Planning Enforcement Service, there was no detailed baseline assessment and performance over the past year should be viewed in such terms.
- 4.4 These proposals have been evaluated by Case Management and Development Management officers engaged in or associated with planning enforcement.
- 4.5 The evaluation came about as a consequence of the Planning Enforcement Action Plan which was introduced to support performance improvement.

#### **5. Proposed Way Forward**

- 5.1 Implementation of a Planning Enforcement Action Plan is recommended to provide a framework for officers to work within and to enable Members to monitor service performance.
- 5.2 Customer service is a key organisational priority and the recommendations set out in this report support that ethos and our aspirations. An increased level of resource will enable timely site visits which in turn will lead to meaningful complainant updates. The targets are inextricably linked, if the site visit is delayed the complainant update will also be delayed.

#### **6. Implications**

Implications		Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		Y	Planning enforcement is a discretionary service however, Paragraph 58 of the National Planning Policy Framework states "effective enforcement is an important as a means of maintain public confidence in the planning system".
Financial implications		Y	<p>The appointment of two additional enforcement case managers will cost an additional £50,078 (shdc share) per annum. The two posts are recommended to be funded from the Planning Earmarked Reserve in 2019-20 and if approved, to be built into the budget setting process as a cost pressure for 2020-21 onwards.</p> <p>It is considered that the improvement in service will improve the reputation of the Council and does represent value for money.</p>
Risk			Risk of under performance against approved service targets leading to reputational risk to the Council
Supporting Corporate Strategy			Environment
Comprehensive Impact Assessment Implications			
Equality and Diversity			None specific to this report
Safeguarding			None specific to this report
Community Safety, Crime and Disorder			Planning enforcement officers work closely with the Police Authority and other bodies
Health, Safety and Wellbeing			Planning enforcement can have a high impact on individuals and communities

Other implications			
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### **Supporting Information**

#### **Appendices:**

Appendix A: Planning Enforcement Performance Data

Appendix B: Proposed revised Enforcement Plan

Appendix C: Proposed Enforcement Action Plan

Appendix D: Proposed Harm Assessment Matrix

#### **Background Papers:**

Executive agenda and minutes – 1 February 2018; and

Joint Overview and Scrutiny Panel / Development Management Committee agenda and minutes – 18 January 2018

### **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed/sign off	<b>Yes</b>
SLT Rep briefed/sign off	<b>Yes</b>
Relevant Heads of Practice sign off (draft)	<b>Yes</b>
Data protection issues considered	<b>Yes</b>
Accessibility checked	<b>Yes</b>