

27 August 2025



Princes Road  
Maldon  
Essex CM9 5DL

[www.maldon.gov.uk](http://www.maldon.gov.uk)



APOLOGIES: Committee Services  
Email: [Committee.clerk@maldon.gov.uk](mailto:Committee.clerk@maldon.gov.uk)

CHIEF EXECUTIVE  
Doug Wilkinson

Dear Councillor

You are summoned to attend the meeting of the;

**OVERVIEW AND SCRUTINY COMMITTEE**

on **THURSDAY 4 SEPTEMBER 2025 at 7.30 pm**

in the **Council Chamber, Maldon District Council Offices, Princes Road, Maldon.**

Please Note: All meetings will continue to be live streamed on the [Council's YouTube channel](#) for those wishing to observe remotely. Public participants wishing to speak remotely at a meeting can continue to do so via Microsoft Teams.

To register your request to speak / attend in person please complete a [Public Access form](#) (to be submitted by 12noon on the working day before the Committee meeting). All requests will be considered on a first-come, first-served basis.

A copy of the agenda is attached.

Yours faithfully

Chief Executive

**COMMITTEE MEMBERSHIP:**

CHAIRPERSON	Councillor S J N Morgan
VICE-CHAIRPERSON	Councillor P L Spenceley
COUNCILLORS	V J Bell J R Burrell-Cook A Fittock L J Haywood A M Lay C P Morley E L Stephens N J Swindle



## **AGENDA OVERVIEW AND SCRUTINY COMMITTEE**

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**THURSDAY 4 SEPTEMBER 2025**

1. **Chairperson's Notices**

2. **Apologies for Absence**

3. **Minutes of the last meeting** (Pages 5 - 10)

To confirm the Minutes of the meeting of the Overview and Scrutiny Committee held on 19 June 2025 (copy enclosed).

4. **Disclosure of Interest**

To disclose the existence and nature of any Disclosable Pecuniary Interests, Other Registrable interests and Non-Registrable Interests relating to items of business on the agenda having regard to paragraph 9 and Appendix B of the Code of Conduct for Members.

(Members are reminded that they are also required to disclose any such interests as soon as they become aware should the need arise throughout the meeting).

5. **Public Participation**

To receive the views of members of the public of which prior notification in writing has been received (no later than noon on the Tuesday prior to the day of the meeting).

Should you wish to submit a question please completed the online form at [www.maldon.gov.uk/publicparticipation](http://www.maldon.gov.uk/publicparticipation).

6. **Member Scrutiny Request - Councillor S J N Morgan - Planning Appeal at Church Road, Wickham Bishops** (Pages 11 - 14)

To consider the report of the Overview and Scrutiny Member Working Group (copy enclosed).

7. **Scrutiny Workplan Item - Planning Appeal At Woodham Mortimer** (Pages 15 - 26)

To consider the report of the Overview and Scrutiny Member Working Group (copy enclosed).

8. **Council Constitution - Planning Appeals Protocol** (Pages 27 - 34)

To consider the report of the Overview and Scrutiny Member Working Group (copy enclosed).

9. **Scrutiny Watching Brief Item - Planning Enforcement** (Pages 35 - 40)

To consider the report of the Overview and Scrutiny Member Working Group (copy enclosed).

10. **Member Scrutiny Item Requests**

To receive and note that the following three new Member scrutiny requests have been received and in line with the agreed procedure will be referred to the Committee's Working Group at its next meeting for initial assessment and report back to the Committee:

Councillor V J Bell ..... Efficiency / performance of Planning Services in dealing with planning applications

Councillor A Fittock ..... Use of Policy H2 in assessing housing mix / monitoring and reporting of data

Councillor E L Stephens ..... Post implementation review of new leisure contract

11. **Any other items of business that the Chairperson of the Committee decides are urgent**

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**NOTICES**

**Recording of Meeting**

Please note that the Council will be recording and publishing on the Council's website any part of this meeting held in open session.

**Fire**

We do not have any fire alarm testing scheduled for this meeting. In the event of a fire, a siren will sound. Please use either of the two marked fire escape routes. Once out of the building please proceed to the designated muster point located on the grass verge by the police station entrance. Please gather there and await further instruction. If you feel you may need assistance to evacuate the building, please make a member of Maldon District Council staff aware.

**Health and Safety**

Please be advised of the different levels of flooring within the Council Chamber.

**Closed-Circuit Televisions (CCTV)**

Meetings held in the Council Chamber are being monitored and recorded by CCTV.

**Lift**

Please be aware, there is not currently lift access to the Council Chamber.

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**MINUTES of  
OVERVIEW AND SCRUTINY COMMITTEE  
19 JUNE 2025**

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**PRESENT**

Chairperson	Councillor S J N Morgan
Vice-Chairperson	Councillor P L Spenceley
Councillors	J R Burrell-Cook, A Fittock, L J Haywood, A M Lay, C P Morley and E L Stephens

**113. CHAIRPERSON'S NOTICES**

The Chairperson welcomed everyone to the meeting and went through some general housekeeping arrangements for the meeting.

**114. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors V J Bell and N J Swindle.

**115. MINUTES OF THE LAST MEETING**

**RESOLVED** that the Minutes of the meeting of the Committee held on 6 February 2025 be approved and confirmed.

**116. DISCLOSURE OF INTEREST**

There were none.

**117. PUBLIC PARTICIPATION**

The Chairperson advised that in accordance with the Council's Public Speaking Protocol one request to speak had been received from Mr Henry Bass, a local resident, who wished to address the Committee in relation to Agenda Item 8 – Member Scrutiny Item Request – Councillor S J N Morgan. He explained that this item of business related to a Planning Appeal relating to Land at Church Road, Wickham Bishops. At this point the Chairperson advised that he would be changing the agenda order, with Agenda Item 8 being considered following this item of business.

Mr Bass then addressed the Committee, providing background detail regarding the Planning application relating to the Planning Appeal. He highlighted his concerns and reasons why he felt the Committee should scrutinise the item.

**118. MEMBER SCRUTINY ITEM REQUEST - COUNCILLOR S J N MORGAN -  
PLANNING APPEAL INVOLVING LAND AT CHURCH ROAD, WICKHAM BISHOPS**

The Committee noted that Councillor S J N Morgan had submitted a scrutiny request on the above matter and that in accordance with the agreed procedure this would be referred to the Committee's Working Group for an initial assessment and report back to the Committee. Councillor Morgan advised that Mr Bass had outlined the main points of his scrutiny request, which centred around how arrangements for providing a response to the Planning Inspectorate's request for a view in the light of modification to the National Planning Policy Framework had resulted in a change to the Planning Department's handling of this appeal. He advised that the matter would be considered by the Working Group the following week.

**119. SCRUTINY OF EXTERNAL / OUTSIDE AGENCIES - ANGLIAN WATER**

The Chairperson introduced this item of business and referred to Grant Tuffs, Regional Engagement Manager from the Anglian Water (AW) public affairs team. Mr Tuffs advised that the role of him and his team was engage with local authorities, politicians and non-government organisations across the AW region. He was supported by a number of his team who then proceeded to introduce themselves:

- Tiffany Howie – Network Manager for Colchester and Ipswich
- Tessa Saunders – Spatial Planning Manager, covering the Essex region and liaises with Local Planning Authorities on local plans.
- Carly Symes – Maldon Operations Manager
- George Skinner - Environmental Process Scientist for the Essex county.

Mr Tuffs then gave a detailed presentation (attached at **APPENDIX 1** to these Minutes) which provided information regarding AW, its purpose and challenges across the region, including:

- The new 'Just Bin It' campaign;
- How AW would be supporting Local Planning Authorities (LPAs) in sharing future growth aspirations in Local Plans;
- Water recycling centres and capacity;
- Growth within the Maldon District and responding to this;
- How AW responds to planning applications;
- Storm overflows, planning improvements to them and recent spill performance;
- Proposed investment in 2025 – 2030.

Mr Tuffs advised that questions received from Members in advance of the meeting would be responded to in full and sent out following this meeting.

A lengthy discussion ensued and in response to questions raised, the following information was provided:

- AW had worked with Maldon District Council (MDC) to provide information to assist with the Local Plan, this work included assessment of the call for sites, reviewing sites in terms of water recycling and network capacity. Latchingdon was the only 'red' area at the moment, and it was confirmed that other areas such as North Fambridge that fed into Latchingdon would also be affected.

- Members were advised of the current regulations that AW followed in respect of treating water and how there was very minimal chemical treatment. Prior to anything being sent to the land it went through a complex process to remove any calorific value which was burnt as a natural gas and put back into the national grid.
- Reference was made to the Water Recycling Centre at South Woodham Ferrers (SWF), the growth scheme proposed and copper concentrates and in response AW advised that if it was agreed that a growth scheme at SWF was to progress then any copper issues would be addressed. This could potentially impact on future growth that the District may consider and there would be greater certainty on this once the Local Plan had been approved, however AW were working with the Council in respect of this.
- Surface water was a matter for the Local Planning Authority as Lead Local Flood Authority and it was its responsibility to seek suitable Sustainable Drainage Systems (SuDS) and the best surface water systems in place from developers. Although AW was unable to comment on surface water it was encouraging all such connections to be sustainable.
- AW gave examples of the work it did with Multi Agency Groups and how working with Lead Local Flood Authorities it had invested some money into ditch clearance in other catchment areas.
- In response to a question regarding using Ultraviolet (UV) filtration, it was explained that storm overflows were not treated however different treatment measures were used throughout the water recycling centre depending on what the environment required. AW were looking into UV filtration or MBR (membrane bioreactor) as a disinfectant measure as both produced a reduction in bacteria, however it was noted that UV was still in the design stage at the present time.
- East Anglia was one of the lowest per capita consumers in the country mainly because of the investment AW had made in leakage reduction and water infrastructure over the years.
- In respect of projects, AW was planning two new reservoirs in Fenland and South Lincolnshire (expected to be in supply around 2036), and a new strategic pipeline from North Lincolnshire to Essex (Great Hawkesley) was due to be finished by 2027. AW was looking into desalination along with other water companies and investing in others. AW had a 25 year rolling plan which it had to keep updated as it was required to produce this for its regulators and this included some desalination in Norfolk and North Lincolnshire. A scheme was proposed for Colchester around advanced water recycling, whereby rather than being discharged into a river the water would be diverted, put into a treatment system and turned into drinking water.
- AW were continuing to look at technologies, innovations and big infrastructures to deliver more water, however it was noted encouraging customers to use less water was a key part of its work.
- AW had just published a shared standard for water efficiency and local plans. This had been developed with Natural England, the Environment Agency and other local water companies. AW had held webinars with Local Planning Authorities (LPAs) and Local Resources East. The standards asked LPAs to have tighter water efficiency standards in their local plans and provide evidence to achieve higher than the optional standard of 110 litres per person per day. In future local plan consultations AW would be encouraging use of these new standards.

- Specific questions were raised regarding Tollesbury and Members were advised that AW had checked the anticipated flows at the Tollesbury site that day and confirmed there was capacity. Permits to discharge were issued by the Environment Agency and any questions regarding this should be directed to them. A small spill reduction scheme was also being delivered in Tollesbury.
- Detailed, technical information regarding treatment in relation to e-coli and fecal coliforms, the effect disinfection had on them and AW's current practice in relation to them was provided to Members.
- AW offered apologies regarding a sewage spill into a Site of Special Scientific Interest in Tollesbury. Members were advised that it had been identified that the pipe was damaged, and AW would be visiting the site the following Monday to carry out a survey and from Wednesday of the same week a date for the repair would be known. It was reported that in this instance the spill was down to human error and measures had been put in place to avoid such occurrences in the future. A clean up of the drainage ditch had been carried out and AW worked with the Environment Agency until ammonia levels were satisfactory. A full review of the alarms coming out of the site along with all site equipment had also been carried out.
- Comments were raised regarding a development site with a newly built sewage pumping system. Members were advised that AW had a Development Service Team which liaised with developers regarding infrastructure needed on site. Developers had to build to a certain specification, following completion a 12 month period to ensure a pumping station was operating correctly followed and only then would AW adopt a pumping station. However, if not up to specification or not operating as expected it would not be adopted as it posed a risk for AW. AW closely worked with developers to ensure they were delivering the right infrastructure.

Members were advised that they were welcome to visit an AW site and view the biological treatment process. Mr Tufts advised that AW would take all comments on board and raise any relevant matters with their customers team, particularly to ensure customers and Ward Members were being made aware of future investments.

The Chairperson thanked the AW Team for their attendance and the information provided.

## **120. SCRUTINY OF EXTERNAL / OUTSIDE AGENCIES - ESSEX COUNTY COUNCIL HIGHWAYS**

The Chairperson advised that this item of business had been postponed and he hoped it would be brought back to a future meeting of the Committee.

## **121. APPOINTMENT OF REPRESENTATIVES TO OUTSIDE BODIES AND WORKING GROUPS**

The Committee considered the report of the Chief Executive to appoint to Outside Bodies and Working Groups of the Overview and Scrutiny Committee for the ensuing municipal year.

The Chairperson called for nominations to the Outside Bodies and Working Group, detailed in the report and following proposals the following was agreed.



## RESOLVED

- (i) That the Committee appoints representatives to the following Outside Bodies, for the ensuing Municipal Year;

<b>Outside Body</b>	<b>2025 / 26 Representative(s)</b>
Essex County Council (ECC) Health Overview Policy and Scrutiny Committee (District Representative)	Councillor P L Spenceley
Project and Improvement Management Framework	Councillors A Fittock and E L Stephens

- (ii) That all members of the Overview and Scrutiny Committee be appointed to the Overview and Scrutiny Committee Working Group, for the ensuing Municipal Year.

There being no other items of business the Chairperson closed the meeting at 8.56 pm.

S J N MORGAN  
CHAIRPERSON

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**REPORT of  
THE OVERVIEW AND SCRUTINY COMMITTEE WORKING GROUP**

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**to  
OVERVIEW AND SCRUTINY COMMITTEE  
4 SEPTEMBER 2025**

**MEMBER SCRUTINY REQUEST – COUNCILLOR S J N MORGAN – PLANNING APPEAL  
AT CHURCH ROAD, WICKHAM BISHOPS**

**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to inform the Committee of its initial assessment of this scrutiny request.

**2. RECOMMENDATION**

That the Committee receives and considers the Working Group's report with a view to concluding this scrutiny item and endorses the proposed revision and strengthening of the Planning Appeals Protocol.

**3. SUMMARY OF KEY ISSUES**

- 3.1 A scrutiny item request was submitted by Councillor S J N Morgan, its receipt being reported to the last meeting of the Committee. At the heart of this request were questions posed to the Assistant Director of Planning and Implementation by Wickham Bishops Parish Council concerning a planning appeal in Church Road, Wickham Bishops as set out in correspondence dated 8 January and 11 February 2025. These were responded to on 30 January and 24 March 2025 respectively.
- 3.2 Three main questions were raised:
- (a) why was it felt that a response had to be given within such a short timeframe given that it was around Christmas holiday period?
  - (b) why was withdrawal of the principal reason for refusal undertaken as part of the Council's response to the appeal when the Planning Inspectorate (PINS) was essentially asking for comments?
  - (c) why was the decision taken to use emergency measures rather than bring the matter back to a planning committee?
- 3.3 The Working Group was mindful of the submission made by Mr Henry Bass in the public speaking session of the last meeting of the Committee. Although also a Parish Councillor, Mr Bass said he was speaking as a lifelong local resident. He had referred to the strong local objection to the development proposal and the decision of the North Western Area Planning Committee to overturn the Officers' recommendation of approval. He too questioned why an extension of time for a response to PINS had not been sought and expressed concern at how this matter had been dealt with under the Emergency Action provision without any consultation

with the Ward Member. He also referred to the inconsistent way in which the application had been handled.

- 3.4 The approach from PINS on 13 December 2024 sought the Council's view on the relevance of the then recently revised National Planning Policy Framework (NPPF) to the appeal. The Parish Council was aware of this and given its wish to have the opportunity to comment, urged the Council to seek an extension of time from the PINS.
- 3.5 The Council had in fact been asked by PINS to comment on the relevance of the revised NPPF to other outstanding appeal cases as well, but this was the only one which had been determined by Committee, in this appeal's case, the North Western Area Planning Committee. A response to PINS would need to be prepared and submitted by 24 December 2024 (due to the deadline set by PINS letter being 27 December 2024 when the Council was closed for the Christmas period) and it was not possible to convene an extraordinary meeting of the Committee within that timescale.
- 3.6 Following legal advice, Officers felt that the only course of action would be for the emergency action powers available to the Chief Executive under the Scheme of Delegation (General Powers) to be utilised, and a response was agreed and submitted after consultation with the Leader of the Council and the Chairperson of the North Western Area Planning Committee as provided for in the Constitution. Officers did point out to the Working Group that a similar approach had been taken earlier this year regarding a site at Tillingham where PINS required an updated view in relation to that appeal.
- 3.7 The Council had previously submitted a Statement of Case defending the reasons for refusal of the application as agreed by Members. The further response to PINS was based on Officers' judgement of the implications of the revised NPPF for those reasons for refusal. To have continued to maintain Reason 1 associated with having a positive Five-Year Housing Land Supply despite the NPPF changes which, in effect, made this negative on 12 December 2024 would have carried the risk of being held as unreasonable behaviour for which an award of costs may have arisen. Clearly, Officers wished to avoid that situation.
- 3.8 On whether the Council should have sought an extension of time to respond it is customary for PINS to set deadlines within the appeal process with the expectation that the parties will comply as required. It was the view of Officers that in their experience PINS was not open to negotiation as to timescales it set, particularly in a case such as this which was progressing towards a decision.
- 3.9 The Parish Council has maintained that the Council could have made a stronger case which, if not altering the eventual decision made by the Inspector may well have had some influence. It regrets also that the two Ward Members were not involved in the emergency action discussions. Some of their questions raised are really aimed at the PINS given that certain matters were outside this Council's control. The Parish Council, while still unhappy with the Council's approach, accepts the position reached and will welcome engagement by the developer at the pre-application stages in the future, which Officers have already confirmed they will facilitate should a pre-application be made.
- 3.10 In terms of how planning appeals are dealt with following a Members' decision to overturn the Officers' recommendation, the Planning Appeals Protocol annexed to the Planning Guidance document in the Constitution provides some clarity, in particular where the Committee at the time of making its decision nominates a

Member or Members to work with Officers and assist in the presentation of / support for the Council's case. It is worth noting that the proposed revisions and strengthening of the Protocol arising from the Working Group's recommendations on the Woodham Mortimer Planning Appeal scrutiny workplan item, particularly around the involvement of the nominated Member(s), and the value of their inclusion in any consultation on proposed emergency decisions / actions, are also relevant to this case. To have this additional clarity built into the Protocol would appear to be a positive response to a common area of concern expressed.

#### **4. CONCLUSION**

- 4.1 The Working Group has made an initial assessment of this scrutiny request. It is considered important in view of the perception that somehow Officers were determined to see that this application was approved despite the earlier Committee decision to convey to the public that the process that was followed was entirely in line with the Council's Constitution and based on legal advice. An explanation of that process and the rationale behind the response given to PINS is to be the subject of a note to be issued to Parish and Town Councils.
- 4.2 Given that there is little scope for further detailed scrutiny, the Working Group endorsed the bringing forward of a strengthened Planning Appeals Protocol resulting from the Woodham Mortimer traveller site/planning appeal scrutiny workplan item to help address a central issue in this scrutiny request, namely the added clarity as to the involvement of the nominated Member(s) in planning appeal matters.

#### **5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2025 - 2028**

##### **5.1 Delivering good quality services**

- 5.1.1 Thorough scrutiny processes support improved performance and efficiency which in turn will contribute to the quality of services provided, and functions undertaken by the Council.

#### **6. IMPLICATIONS**

- (i) **Impact on Customers** – None directly, but individual scrutiny reviews will enable the impact on customers to be assessed.
- (ii) **Impact on Equalities** – Equalities are considered as part of the reporting on review work undertaken by Officers.
- (iii) **Impact on Risk (including Fraud implications)** – Scrutiny reviews enable potential Corporate Risks to the organisation and their mitigation to be identified.
- (iv) **Impact on Resources (financial)** – Scrutiny reviews offer the potential for an assessment of financial impact to the organisation.
- (v) **Impact on Resources (human)** – Scrutiny reviews offer the potential for an assessment of any resource impact to the organisation.
- (vi) **Impact on Devolution/Local Government Re-organisation** – None.

Background Papers: None

Enquiries to: Stuart Jennings, Corporate Governance Project Officer

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## **REPORT of THE OVERVIEW AND SCRUTINY COMMITTEE WORKING GROUP**

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**to  
OVERVIEW AND SCRUTINY COMMITTEE  
4 SEPTEMBER 2025**

### **SCRUTINY WORKPLAN ITEM – PLANNING APPEAL AT WOODHAM MORTIMER**

#### **1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to inform the Committee of the further findings and conclusions of the Overview and Scrutiny Committee Working Group (the Working Group) on this scrutiny workplan item.

#### **2. RECOMMENDATION**

That the Committee receives and considers the Working Group's report with a view to concluding this scrutiny item and endorses the proposed revision and strengthening of the Planning Appeals Protocol.

#### **3. SUMMARY OF KEY ISSUES**

- 3.1 At its last meeting the Committee received a report on the Working Group's further consideration of a scrutiny item request submitted by Councillor S J N Morgan. It was decided that the matter should be added to the scrutiny workplan and four broad areas for scrutiny were identified. The Committee asked the Working Group to prepare further information on these four areas for further scrutiny.
- 3.2 The initial request reported to the Committee in September 2024 sought a review of various issues including the Council's conduct in relation to an appeal against the refusal of application 22/00344/FULPP-11053774 for a travellers' site beside the A414 at Woodham Mortimer. Planning permission was granted on appeal, subject to conditions, on 21 August 2023 for the change of use of land for two gypsy / traveller pitches comprising the siting of one mobile home and one touring caravan per pitch on the site.
- 3.3 There has over a period been email communications from a Planning Agent acting for local residents sent to Members and Officers setting out representations on the range of issues raised in this scrutiny request. These were covered previously but are addressed more specifically in this report following further consideration by the Working Group at its last two meetings. The report of the Working Group's deliberations is attached as **APPENDIX A**.
- 3.4 Of particular note is that the Working Group received information based on legal advice as to the status and potential for implementation of the permission granted on appeal. In the light of this, the Working Group was satisfied that the implications of the missed deadline for a timetable to be submitted as required by condition 7 need no longer be scrutinised. The reason why the timetable was missed and the

implications of failing to meet the deadline for its consideration are set out in the Working Group's report.

- 3.5 The Working Group noted that it was evident that throughout the process of the application and appeal a number of errors had occurred. The Working Group wished to emphasise this to the Committee in terms of lessons learned. Officers acknowledged this and would look at potential process improvement with implementation of any outcomes to be balanced against the priority of processing planning applications. As a possible option, Members suggested new software providing a database for monitoring and flagging important steps in a process. They stressed however that it was important that they were made aware of and understood what improvements or changes were introduced.
- 3.6 The Working Group also concluded that the Planning Appeals Protocol, which was part of the Constitution, could be strengthened in terms of potential Member involvement and the management of the appeal process. Officers have looked at this and in the light of the Working Group's conclusions here and on another scrutiny request item and will be presenting this separately to the Committee.

#### **4. CONCLUSION**

- 4.1 The Working Group has given further detailed consideration to the areas of scrutiny set by the Committee hopefully sufficient for the Committee to conclude its scrutiny of this item and to endorse the potential outcomes by way of improvements to process arising from the lessons learned. As a consequence of this scrutiny the Council's position can be better explained to the public and some of the concerns expressed by local residents can perhaps be allayed.

#### **5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2025 - 2028**

##### **5.1 Delivering good quality services.**

- 5.1.1 Thorough scrutiny processes support improved performance and efficiency which in turn will contribute to the quality of services provided, and functions undertaken by the Council.

#### **6. IMPLICATIONS**

- (i) **Impact on Customers** – None directly, but individual scrutiny reviews will enable the impact on customers to be assessed.
- (ii) **Impact on Equalities** – Equalities are considered as part of the reporting on review work undertaken by Officers.
- (iii) **Impact on Risk (including Fraud implications)** – Scrutiny reviews enable potential Corporate Risks to the organisation and their mitigation to be identified.
- (iv) **Impact on Resources (financial)** – Scrutiny reviews offer the potential for an assessment of financial impact to the organisation.
- (v) **Impact on Resources (human)** – Scrutiny reviews offer the potential for an assessment of any resource impact to the organisation.



(vi) **Impact on Devolution / Local Government Reorganisation** – None.

Background Papers: None.

Enquiries to: Stuart Jennings, Corporate Governance Project Officer.

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**Scrutiny Workplan Item – Traveller Site on land off A414 at Woodham Mortimer**

1. The four main areas of scrutiny set by the Committee and the detailed points of scrutiny looked at by the Working Group are set out in bold, together with the information gathered and responses in italics, are as follows:

**A. Planning Appeal – chronology of events / what happened / what went wrong and why?**

➤ **Scene setting as to the management of the appeal**

➤ **Officer recommendation overturned/professional conflict**

*Planning application 22/00344/FUL was refused planning permission at the District Planning Committee on 22 September 2022. Members resolved to overturn the officer recommendation for approval. On 17 February 2023 the Local Planning Authority (LPA) was notified that an appeal against the refusal of planning permission had been submitted to the Planning Inspectorate. As part of the appeal process a 'start letter' is received setting out the timetable for the submission of documents to the appeal. This includes the date the statement of case is to be submitted to the Planning Inspectorate. On 28 February 2023 the case officer to manage the appeal was identified and initial documents processed.*

➤ **Clarification of non, rather than late, submission of appeal statement and Statement of Common Ground**

*On 4 April 2023, the Council received an email from the Planning Inspectorate (PINS) advising that the Council's Statement of Case had not been received by the due date. Comments from the Head of Development Management and Building Control following the email from PINS indicates that it was understood that the appeal was in hand, the only matter being that an agency officer would represent the Council at the hearing instead of the permanent officer. Given that the due date had passed, PINS would not accept a late submission. The agency officer became unavailable, and a decision was taken to engage an external consultant.*

*On 12 May 2023 the Council requested fee quotes from three external consultants.*

*On 22 May 2023 the Council had conversations with Boyer Planning and clear.<sup>1</sup> (Planning division) on representing the Council at the appeal.*

*On 24 May 2023 the Council commissioned Arron Breedon MRTPI (Member of the Royal Town Planning Institute) of clear. to represent the Council's case. Mr Breedon had conversations with PINS regarding the lack of a Statement of Common Ground from the Council and was advised by PINS that the Council would be able to present its case to the hearing in full, notwithstanding the lack of a statement.*

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<sup>1</sup> <https://cleararchitects.co.uk>

*On 19 June 2023 the Council submitted the Statement of Common Ground, which is a document in which both the appellant and the Council agree on matters which are not in dispute or matters which are in dispute and on which there is no agreement<sup>2</sup>. The Council's position was that the Maldon District Local Development Plan Policy H6 was relevant to the assessment of the appeal and its approach to a criteria-based assessment of Gypsy and Traveller sites did not undermine the policy.*

➤ **Representation arrangements – who actually attended**

*The Council was represented by Mr Arron Breedon MRTPI of clear. Planning and Maldon District Council (MDC) Environmental Health Officer (EHO).*

➤ **The Environmental Health Officer's involvement/awareness**

*The Officer representing MDC Environmental Health, was called at the last minute request of the Planning Inspector who sought input in respect of the noise and nuisance reasons for refusal. The EHO made it clear that Environmental Health officers found no statutory nuisance following the reports received and as such there was no grounds on which formal action under Environmental Health legislation could be taken against the occupiers of the site.*

**B. Assertions made, and issues raised in the most recent emailed communication from Russell Forde** (may be part of a long sequence of correspondence) – overlaps with the Planning Appeal theme above –

***Most recent***

➤ **No appeal statement was submitted whatsoever**

➤ **See comments above that the Inspector allowed the Council to present its full case verbally at the appeal.**

➤ **The EHO who attended was not familiar with previous site visits and readings – he was completely oblivious**

*The issues of nuisance complaint investigations and commenting on a planning application proposal are entirely separate. The issue of potential noise nuisance has already been dealt with and noted by the Working Group and reported to the Committee. There were no objections on noise grounds when Environmental Health were originally consulted on the application. The position as noted by the Appeal Inspector was that there was nothing before him to indicate that the proposed use would give rise to noise and disturbance to existing residents and that there were separate mechanisms available to the Council to deal with any noise arising from occupation of the site.*

*In terms of the appeal hearing, the attendance of the EHO was as a result of the Inspector requesting, during the hearing, that he (if*

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<sup>2</sup> They are an expected part of planning appeals and serve to help the Inspector narrow the focus of hearings or inquiries to the matters which are in dispute.

*possible) attend to respond to matters concerned with noise nuisance. The EHO was able to attend and take part, but was not given time to prepare, as it was the position that the matters of noise raised in the reason for refusal were not an Environmental Health issue as EHOs had not objected to the scheme during the planning application on noise grounds; a fact contained in the Committee report. The comments / responses made by the EHO could only reasonably be to state the findings of Environmental Health colleagues recorded on their case file – the EHO's professional position was that there was nothing in the case findings that could be challenged from an Environmental Health perspective and powers to deal with those matters fall under their legislation.*

*Matters of noise and nuisance / disturbance could only therefore be dealt with by the Council's Planning witness under planning considerations. As there was no statutory basis for a noise objection, and the use itself is not a noise generating activity beyond a residential habitation of the site, there were no substantive grounds on which to defend this reason for refusal. As stated above, the Inspector made this point clear in his findings. An important distinction all Planning Committees need to acknowledge is that when determining a planning application / appeal - it is the development that needs to be tested not what may have already happened on the site or what might happen from what is a residential use.*

➤ **Relevance of trees to the appeal – two Officers lied to and misled the Committee – are Tree Preservation Orders (TPOs) in place?**

*A TEMPO (Tree Evaluation Method For Preservation Orders) was carried out on 11 February 2022 by Andrew Day Arboricultural Consultancy and confirmed that the tree merited a TPO. Emails between relevant officers of the Council reveal that an Area Tree Preservation Order was served on Friday 11 February 2022. A Temporary Stop Notice requiring specified work / activities on the site to cease was served on Monday 14 February 2022. The Emails also report that the Notice was breached. Officers visited the site to confirm. The Director of Service Delivery and the legal officer were included in the communication.*

*As such, officers had not lied as alleged by Mr Forde. The reporting of the TPO by Mr Forde and commented on by the Planning Officer was correct as to the facts of the case at the time. The allegation by Mr Forde therefore is without foundation.*

*To lie – as alleged by Mr Forde – the former officers would have had to have had the intention to deceive the Committee.*

*The officers are no longer employed by the Council and cannot be interviewed against the MDC Code of Conduct as part of this scrutiny item. Their email accounts no longer exist, and it cannot be established beyond reasonable doubt that the former officers had any intent to deceive when they gave verbal advice at the Committee. The Professional Code of Conduct in place at that time was the [RTPI Code of Professional Conduct 2016](#) (updated 1 February 2023).*

*The Council has not been made aware of any formal complaint being made to the RTPI Conduct and Discipline Panel, which is a Coded obligation on any other Member of the RTPI if they know of a professional member who has breached the code.*

*The Committee report mentioned that the vegetation and trees on the south and east boundaries of the site had been removed which had resulted in some visual harm. At the meeting it was clarified that the removal of trees had taken place prior to the service by the Council of a tree preservation order. The Committee report also dealt in some detail with the submitted Tree Protection Plan and this proposed to deal with certain remaining trees, and a condition was recommended to secure protection and also require new soft landscaping. The appeal Inspector observed that limited harm had been caused by the removal of trees and noted that some limited opportunities existed for new planting.*

➤ **Lack of a timely plan to ensure adequate representation at the appeal**

*The appointment of the consultant for the appeal was a challenge for this appeal. The Council had a number of consultants who did not respond to the specification, others declined and only one who was willing to take the case on. Whilst the search started in advance, their appointment was not until just before the hearings and this did affect how much time they had to present the Council's case at the hearings. No external party would have been able to prepare any quicker.*

*The oversight of appeal caseload was at the time of this appeal an activity which rested with Planning Officers as part of a case load, overseen by the Development Management Team Manager. Work on the Planning and Implementation's Service Plans since 2024 has highlighted the need to reduce the reliance of only looking at appeals as a caseload activity and instead explore how software solutions could be deployed better to support the task. Supported by discussions with best practice authorities elsewhere in Essex, Officers have already begun work on developing a new Planning Appeal dashboard using Uniform and PowerBi to simplify how appeal information can be monitored at a glance by management, to ensure cases are meeting the deadlines set by the Planning Inspectorate and to ensure deadlines are not inadvertently missed.*

➤ **External representative was not prepared on the day and ill-equipped to present the case that existed.**

*External representative was appointed on 24 May 2023 after an extensive search for willing consultants to undertake the work. This gave him 3 / 4 weeks to prepare, as best as he could and included engaging with officers prior to the hearings on GTAA (Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment) need.*

➤ **Officers advice fell short of the highest level of integrity required and appear to be seeking to avoid blame**

*This assertion is refuted. Officers operated to their best ability given the circumstances before them. It is acknowledged that the non-submission of a statement meant that the Council had no written representation of its case, however that did not detract from officers presenting the case to the relevant standards. The fact remains that the officer could not*

refute the policy basis for supporting the appeal, and the reasons for refusal had no firm planning basis on which the case could be defended. This is all the more clear due to the fact that no statutory nuisance was identified by Environmental Heath. Therefore, the arguments to be presented were very limited.

- **The parent permission has lapsed – Officers do not accept the logic of this position**

*The Council's planning legal advice has been that this is not the case and this external advice was used to inform Officers' position.*

#### **Earlier representations**

- **Presenting Officer deliberately misled the Committee on 22/9/22 about the status of the site access to the A414 – access misrepresented in application - consultation response of CHA not reliable – Officers' failure to clarify this with CHA amounts to maladministration**

*Access dealt with on the basis of that shown on the application as submitted. There is no requirement to investigate its status; that is for the Highway Authority to do. The Committee report referred to the site benefitting from an existing access which prior to the development commencing had been closed and fenced off. No material changes had been made to the access. The Highways Authority raised no objection to the proposed access subject to the condition as to its width.*

*At the Committee meeting, reference was made to the photos clearly showing an existing access, even if overgrown and not in use. Nothing had been done to create a formal access. Reference was also made to the existence of a dropped kerb which indicated that historically an access had been there.*

*The appeal Inspector acknowledged this and concluded that the proposal would formalise the existing access.*

*It is noted that no formal complaint as to maladministration has been made to date.*

- **Chronology of subsequent events, including key representations to the Council, responses on behalf of the Council, planning and other applications submitted including update on their current status. In particular, the letter of January 2024 from Holmes and Hills re. the lapsing of the original site permission granted on appeal – the current application cannot be considered valid, and the Council's response**

*The Council sought Counsel advice following the letter from Holmes and Hills. Our Counsel had a different view and gave their reasoning which was considered by officers. It cannot be provided to Mr Forde or the residents as it is bound by legal privilege.*

- **Failure by Officers to take corrective action compounding the errors of the past**

*Officers acted appropriately at all stages of the process. Where unauthorised activity took place a Temporary Stop Notice was served,*

*an emergency TPO was served, and an injunction was obtained on the site. Where any other activity took place on the site, officers assessed as to whether any breach of planning control had occurred and acted according to professional protocol. In terms of noise and disturbance, officers had regard to statutory regulatory powers in determining whether nuisance had occurred which triggered statutory action. Where none had occurred, officers reported accordingly.*

*Officers have not acted alone and have sought Counsel opinion given the challenges and complexities of planning law. Challenges of practice which are a matter of judgement are noted and it is respected that Mr Forde holds a different view, but neither officers nor the Council are compelled to fall into line and agree with that view.*

**C. Suggested outcomes/steps to avoid this happening again in the future**

- i. Training for Members to help them become more familiar with the Planning Appeal processes, when they can get involved etc in order to support communities and manage expectations.*
- ii. Members to be aware, and it be noted in the Planning Appeals Protocol, that officers may be professionally conflicted and therefore cannot represent the Council where an officer recommendation to approve has been overturned. This would extend to all officers in the planning service including managers who sign off the case.*
- iii. Amendments to the Planning Appeals Protocol to provide clarification on how Members can get involved in the appeal process, particularly since the introduction of the Constitutional Brake in 2023.*
- iv. After a Committee decision overturn, we could bring forward the activity to canvas and find a suitably qualified third party to defend the Committee decision to the point in time we are notified on the appeal's registration. This could include engagement with nominated Members where a choice is needed, or where it becomes clear a third party cannot be found and nominated Members may need to step into the breach and become witnesses for Council.*

**D. Any policy / protocol / guidance on the handling of an appeal involving a decision where the Officer's recommendation has been overturned**

*The Planning Guidance document in the Constitution states that a Planning Appeals Protocol has been approved and is appended to the Guidance. Further, that in the event of a decision taken to refuse contrary to the recommendation of the Officers, the Committee may nominate a Member to assist in agreeing the precise reasons for refusal and with the preparation and presentation of the Council's case should the decision be appealed.*

*The Guidance also states that Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners are obliged to follow the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries and hearings have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with that Code.*



*Depending on the conclusions/outcomes of this scrutiny, additional content for the Planning Appeals Protocol, particularly to acknowledge the professional conflict faced by Officers when their recommendation has been overturned, and in relation to the management of appeals, might be helpful and provide greater assurance.*

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## REPORT of THE OVERVIEW AND SCRUTINY COMMITTEE WORKING GROUP

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to  
OVERVIEW AND SCRUTINY COMMITTEE  
4 SEPTEMBER 2025

### COUNCIL CONSTITUTION – PLANNING APPEALS PROTOCOL

#### 1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to present to the Committee and revised and strengthened version of this document.

#### 2. RECOMMENDATION

- (i) That the Committee endorses the revised and strengthened version of the Planning Appeals Protocol;

To the Performance, Governance and Audit Committee:

- (ii) that the Planning Appeals Protocol (**APPENDIX A**) is adopted for inclusion in the Council's Constitution.

#### 3. SUMMARY OF KEY ISSUES

- 3.1 The Planning Appeals Protocol is an appendix to the Planning Guidance document in the Council's Constitution. In two scrutiny items recently considered by the Working Group and the subject of separate reports to this meeting of the Committee reference has been made to the protocol. Apart from the fact that it was evident that the nominating a Member or Members to assist in the appeals process had not been a regular practice by the Planning Committees, greater clarity and understanding of the Member role was required. Another issue requiring greater clarity and understanding, in the context of Officers' role in managing the appeals process, was the position Planning Officers faced in defending a Committee decision contrary to their own professional opinion and recommendation, which potentially placed them in conflict with the Code of Conduct of their own professional body (The Royal Town Planning Institute). The Working Group concluded in both scrutiny items that a revised and strengthened Planning Appeals Protocol was required, and Officers were asked to bring this to the Committee.
- 3.2 A revised version of the Protocol has been prepared and is at **APPENDIX A** to this report. It was produced in time for the Working Group to have sight of it at its July meeting and was endorsed. The revised version addresses the points referred to in 3.1 above and additionally provides some commentary which acknowledges the potential value of the Nominated Member(s) being involved in any discussion / consultation undertaken as part of any Emergency Action / Decision required during the appeal process. While this cannot override what the Constitution separately provides in the Scheme of Delegation for such action / decisions, it may help raise the profile of the Nominated Member's involvement in future similar situations.

- 3.3 The Working Group agrees with Officers the profile of the Protocol itself will be raised by the refresh that adoption of a revised and strengthened version will provide. If the Committee endorses this it will need to be referred to the Performance, Governance and Audit Committee with a recommendation that it is adopted and added to the Council's Constitution.

#### **4. CONCLUSION**

- 4.1 The Working Group has concluded, as an outcome from two scrutiny reviews, that it would be beneficial for a revised and strengthened Planning Appeals Protocol to be included in the Council's Constitution.

#### **5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2025 - 2028**

##### **5.1 Delivering good quality services.**

- 5.1.1 Thorough scrutiny processes support improved performance and efficiency which in turn will contribute to the quality of services provided, and functions undertaken by the Council.

#### **6. IMPLICATIONS**

- (i) **Impact on Customers** – Individual scrutiny reviews will enable the impact on customers to be assessed. The subject of this particular scrutiny request directly relates to the experience of customers of leisure facilities provided on behalf of the Council.
- (ii) **Impact on Equalities** – Equalities are considered as part of the reporting on review work undertaken by Officers.
- (iii) **Impact on Risk (including Fraud implications)** – Scrutiny reviews enable potential Corporate Risks to the organisation and their mitigation to be identified.
- (iv) **Impact on Resources (financial)** – Scrutiny reviews offer the potential for an assessment of financial impact to the organisation.
- (v) **Impact on Resources (human)** – Scrutiny reviews offer the potential for an assessment of any resource impact to the organisation.
- (vi) **Impact on Devolution / Local Government Re-organisation** – None.

Background Papers: None.

Enquiries to: Stuart Jennings, Corporate Governance Project Officer.

## **MALDON DISTRICT COUNCIL PLANNING APPEALS PROTOCOL**

### **1. ROLE OF MEMBERS IN COMMITTEE PLANNING APPEALS**

#### **1.1 Householder Appeal**

- 1.1.1 The Member role is a collective Committee responsibility given that the critical factor with householder appeals, which do not involve providing any additional supplementary statements, is to ensure that the Committee's reasons for overturning Officer report recommendations are clear and based on sound planning reasons.

#### **1.2 Member Involvement in Written Representation, Informal Hearing & Public Inquiry Appeals**

- 1.2.1 Where the Committee overturns an Officer recommendation, including where the Constitutional Brake has been invoked, in addition to agreeing the reasons for refusal the Committee will be asked to identify which Member(s) should be involved with any subsequent appeal to help strengthen the defence of the Council's case, and even appear at an inquiry as part of the Council's team. The Member(s) nominated by Committee to engage with any subsequent appeal may include the Chairperson or Vice-Chairperson, or another Member having proposed or supported the decision. Members will need to be aware that officers may or may not support the reason(s) for refusal depending on whether they consider that there will be conflict between the reason(s) and Officers' professional opinion having regard to the local plan and any other material considerations as set out in the Officers report. In this respect, Officers will need to be aware that the services of an external consultant would be sought in a timely manner and in accordance with procurement rules.
- 1.2.2 Where Members are nominated it is important that they understand the nature of the specific role as set out below, and that their appearance at a hearing or inquiry will be wholly as a representative of the Council, as a whole, to support the case made around the Committee's decision. In cases where an external consultant is procured, they would work with that consultant, with the support of Officers.

#### **1.3 Written Representation Appeal**

- 1.3.1 Written representation appeals are the quickest and simplest appeals requiring Member involvement. They require a Statement of Case to be prepared and a site visit with the Planning Inspector, but these appeals are usually for smaller scale development such as a single dwelling or change of use.
- 1.3.2 Where the Committee overturns the Officer recommendation the Nominated Member(s) will be engaged with the following:
- A letter will be sent to advise the nominated Member(s) about the appeal, the name of the case officer and/or planning consultant and the date the Statement of Case is due;
  - The Nominated Member(s) should liaise with the Case Officer / consultant, as required, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement and cost claim (if relevant). Members' comments need to be made in writing to the Case Officer / consultant in order to ensure there is a clear audit trail of the input provided by the Nominated Member(s).

- A written draft Statement of Case, with any necessary appendices will then be prepared by the Case Officer / consultant.
- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer / consultant.
- A final check by the Case Officer / consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer / consultant and Planning Inspector.
- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

#### **1.4 Informal Hearing Appeal**

##### **1.4.1 Where the Committee overturns the recommendation the Nominated Member(s) will be engaged with the following:**

- A letter will be sent to advise the Nominated Member(s) about the appeal, the name of the case officer and/or planning consultant and the date the Statement of Case is due;
- The Nominated Member(s) should liaise with the Case Officer / consultant if required, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement of Case and cost claim (if relevant). Member comments, where required will need to be made in writing and forwarded to the Case Officer/ consultant in order to ensure there is a clear audit trail of the input provided by the Nominated Member(s).
- A written draft Statement of Case, with any necessary appendices will then be prepared by the Case Officer or consultant.
- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer / consultant.
- A final check by the Case Officer/consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- Prior to the hearing, a meeting will be held between the Member(s) and Case Officer/consultant, alongside any external witnesses and solicitor (where necessary) to consider the issues / tactics and the appellant's case.
- The Nominated Member(s) will attend the Informal Hearing either in an observer capacity, or as part of the Council team.

- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer / consultant and Planning Inspector.
- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

## **1.5 Public Inquiry**

1.5.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:

- A letter will be sent to advise the Nominated Member(s) about the appeal, the name of the Case Officer and/or planning consultant and the date the Statement of Case is due.
- The Nominated Member(s) should liaise with the Case Officer / consultant, to discuss the policies used to refuse the application, the content to provide the outline for the Council's Statement of Case and cost claim (if relevant). Member comments, where required, will need to be made in writing and forwarded to the Case Officer / consultant to ensure there is a clear audit trail of the input provided by the Nominated Member(s).
- A written Statement of Case, with any necessary appendices will then be prepared by the Case Officer or consultant.
- The Nominated Member(s) will review the Council's draft Statement and make amendments where required and send back to the Officer / consultant.
- A final check by the Case Officer/consultant and/or Senior Management of any Nominated Member(s) amendments will be made to ensure the contents are focused on the reasons for refusal given at Committee and do not inadvertently, in the quest to defend the Council's decision, imply new reasons for refusal. In the event of any concerns of this nature, the Senior Manager will speak to the Nominated Member(s) and confirm in writing any subsequent changes that would be necessary to ensure the Statement of Case stays within its remit.
- Prior to the Public Inquiry, a meeting will be convened by the Council's legal representative between the Nominated Member(s), the Case Officer/consultant and any external witnesses / experts (where necessary) to consider the issues / tactics and the appellant's case.
- The Nominated Member(s) will attend the Public Inquiry either in an observer capacity, or as part of the Council team in presenting the case.
- The Nominated Member(s) will be advised of the date of the site visit in order to accompany the Case Officer/consultant and Planning Inspector.
- The Nominated Member(s) will be notified of any internal consultation involving the Chair of the relevant Planning Committee undertaken prior to any Emergency Action decision being taken under the Scheme of Delegation (General Powers), e.g. response to a time-limited request from the Planning Inspectorate.

## **2. MANAGEMENT OF THE APPEAL PROCESS**

- 2.1 In managing the Planning Appeal process in the Council's control the Assistant Director: Planning and Implementation will:
- determine on a case-by-case basis, as early as possible where it would be necessary to either seek the Nominated Member(s) and/or an external planning consultant to represent the Council at either an Informal Hearing or Public Inquiry.
  - Where unreasonable behaviour by the appellant is considered to have taken place, wherever practical, seek to recover the Council's defence costs from appellants in preparing for and undertaking an appeal.
  - Where Nominated Member(s) have not been selected, reserve the right to request Ward Member assistance in circumstances where local knowledge is paramount and invaluable to the appeal, including appeals that may arise from planning enforcement action or a refusal of a Certificate of Lawfulness.

## **3. THE ROLE OF OFFICERS**

- 3.1 In advance of hearings and inquiries, the Development Management Technical Support Team directly support the Planning Inspectorate to secure a suitable venue, including a secure office for the Inspector (if requested) and/or the appellant. On the day of hearings and inquiries, the team support the Inspector to ensure hearings and inquiries are held safely in accordance with any risk assessments and registration requirements, including assisting the public to observe either in the hearing or inquiry location or via any spillover space where capacity has otherwise been exceeded.
- 3.2 Planning Officers would normally appear as witnesses at planning appeals and other proceedings on behalf of the Council. The only exception would be in those instances where officers feel professionally conflicted having regard to the standards of their profession due to the reasons for refusal on an officer recommendation overturn. In some circumstances (such as where specialist evidence is required) it may also be necessary for other professional officers (such as Environmental Health) to attend, or for the Council to appoint specialist consultants to appear and give evidence for the Council's case.
- 3.3 In giving evidence, Planning Officers will present the best possible case on behalf of the Council, while complying with the Royal Town Planning Institute (RTPI) Code of Professional Conduct. This Code requires that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their bona fide professional opinion.
- 3.4 Planning and Legal Officers will support Members whether involved with the presentation of the Council's case or not, including those otherwise attending or wishing to make representations at appeals, and advise them in advance on how to prepare for speaking and/or delivering evidence.

## **4. THE ROLE OF MEMBERS AS PRIVATE INDIVIDUALS AND PARISH / TOWN COUNCILLORS**

- 4.1 In situations where Members have clearly demonstrated a 'closed mind' on a planning application prior to consideration by Committee, they will not be permitted to



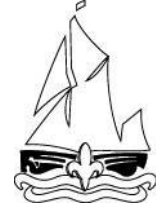
be involved in the determination of that application or the subsequent appeal statement or process. In this case, or where a Member does not support the Council decision irrespective of the type of appeal, a Member may decide to make their submissions to an appeal which will be in either a personal capacity only or in their role as a Town / Parish Councillor.

- 4.2 It may be that on occasions electors may expect that their Ward Member(s) will attend a hearing or inquiry to further represent their interests and view. This can be seen as part of the democratic process, and a Ward Member wishing to do so should take the opportunity of first being fully briefed by Planning Officers on all the issues the subject of the appeal.

## **5. REVIEW OF REASONS FOR REFUSAL**

- 5.1 On occasions during the course of an appeal, the Council may formally be requested by or on behalf of the appellant to reconsider its reasons for refusal. Any review shall be undertaken at the level the original decision was made and on report of the Assistant Director: Planning and Implementation only.
- 5.2 Where a Committee has not formally reconsidered its reasons for refusal, and there is insufficient time to do so, then in order to ensure the Council minimises its exposure to unreasonable behaviour cost awards against it, the Assistant Director: Planning and Implementation, in managing the appeal process, will act in consultation with the Leader of the Council, the Chairperson of the relevant Planning Committee and any Nominated Member(s).

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## **REPORT of THE OVERVIEW AND SCRUTINY COMMITTEE WORKING GROUP**

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**to  
OVERVIEW AND SCRUTINY COMMITTEE  
4 SEPTEMBER 2025**

### **SCRUTINY WATCHING BRIEF ITEM – PLANNING ENFORCEMENT**

#### **1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to update the Committee on this scrutiny watching brief item.

#### **2. RECOMMENDATION**

That the Committee receives and considers the Working Group's report and determines whether any particular recommendations or references need to be made within the Council to assist with the operational issues currently experienced by the Planning Enforcement Team.

#### **3. SUMMARY OF KEY ISSUES**

- 3.1 The Committee has for some time had Planning Enforcement on its list of watching brief items which are monitored by the Working Group (WG). Regular updates on staffing and performance continue to be received. At its March 2025 meeting the WG was concerned to note that performance had started to deteriorate again after a period of good progress. The number of outstanding cases had increased again, and this was attributed wholly to renewed staffing difficulties, it being apparent that the team had never been able to operate at a full complement and lacked resilience. These difficulties together with the position on performance, although not as bad as before the team was restructured and given additional resources, was of sufficient concern to the WG for this to be brought to the attention of the Committee.
- 3.2 A further update was provided to the April meeting of the WG which has now been brought up to date by Officers for the benefit of the Committee together with an explanation of the staffing difficulties and the impact this has on performance. Members have raised the issue of having more detailed data on Planning Enforcement - Officers need to work with Members to understand what categories of information they want presented and to also see if the Enforcement Policy supports its collation and analysis.
- 3.3 An email was sent to all Members on 18 July 2025 briefing them on the present position with regard to the Planning Enforcement Team.
- 3.4 The number of open cases presently stands at 321, this is 11 more than the March update figure. Out of those 321 – 29 have yet to be assigned an Officer; they have been logged in Uniform and are on the master spreadsheet, but no action has been taken on them yet, other than they are having their site visits carried out. None of the cases are high priority, as defined by accordance with the Council's Planning

Enforcement Policy in that they do not involve Tree Preservation Orders or Listed Buildings. Some of the Team's enforcement appeals are coming up to two years waiting for the Planning Inspectorate, which is prolonging cases which have reached this stage of the process. Officers have written to the Inspectorate to complain but they just stated that they are working through the caseloads.

- 3.5 Regarding active formal enforcement action, the team is currently processing the following:

<b>Enforcement (Enf) Notices to be Served</b>	<b>12</b>
<b>Enf Notices at Appeal</b>	<b>5</b>
<b>Enf Notice waiting for compliance</b>	<b>2</b>
<b>Enf Notice Prosecution</b>	<b>1</b>
<b>Listed Building Consent (LBC) Enf Notices to be served</b>	<b>4</b>
<b>LBC Enf Notices at Appeal</b>	<b>0</b>
<b>LBC Enf Notice waiting for compliance</b>	<b>0</b>
<b>Breach of Condition Notices (BCN)s to be Served</b>	<b>5</b>
<b>BCN Prosecution</b>	<b>1</b>
<b>Temporary Stop Notices Served waiting for compliance</b>	<b>0</b>
<b>Tree Prosecution Pending</b>	<b>1</b>
<b>Tree Prosecution at court</b>	<b>0</b>
<b>Penalty Charge Notice (PCN) Prosecutions</b>	<b>1</b>
<b>Enf Warning Notice Pending</b>	<b>0</b>
<b>Enf Warning Notice Served</b>	<b>1</b>

### 3.6 Staffing

- 3.6.1 As of 1 April 2025, the establishment was reduced by one Enforcement Officer. The Enforcement Team now consists of the following:
- one Team Leader
  - two Enforcement Officers – one vacant post
  - one Compliance Officer
  - one Technical Support Officer – vacant post
- 3.6.2 The Team is supported by the Head of Planning Policy and Implementation. A replacement Compliance Officer has now been appointed. This does mean that site visits are being carried out in a timely way and site visits are up to date.
- 3.6.3 The Team still has two vacant posts - Enforcement Officer, and Technical Support Officer. The Team is therefore having to cover these vacancies for now, which is

affecting capacity. In addition to the continued difficulty in recruiting to these posts, the Team's resource has been affected by sick leave absence.

### **3.7 Impact staffing issues on performance**

- 3.7.1 The staffing issues are having an impact on the Team's performance. The level of outstanding cases is still being maintained in the low 300s, but it is very slowly rising – new cases are not being allocated to an officer unless they are priority cases (e.g. Tree Preservation Order matters, trees in Conservation Areas, Listed Buildings). The Team Leader and Enforcement Officer now have 107 and 102 open cases each. The cases previously allocated to officers who have left the authority need to be reallocated, but it is not possible at the present time, without overloading the caseload of the remaining Officers. Any major changes to these unallocated cases are being monitored and if it is possible actioned. The Head of Service has also now picked up a small caseload to assist the numbers of cases being processed. As cases are being completed and closed then the new unallocated cases are being allocated. The Team has added some information about resource capacity to the Council's initial email to complainants to help manage their expectations.
- 3.7.2 An issue has arisen because the new Compliance Officer has started to carry out site visits relating to outstanding cases. Once the site visit has been actioned; cases move from 'needing a site visit' to 'needing a response to the site visit' and there is only one Officer in post at present to handle this. The Team has had permission to recruit a consultant Enforcement Officer for a period of three months to try and work through some of the complex enforcement notices that require serving and the backlog of cases.
- 3.7.3 Every day the Head of Service is assessing all the cases that the Compliance Officer is visiting and closing those that need no further action. The Technical Support Officer's role is to log new cases, filter out 'no breaches' before cases are logged, request additional information from complainants, acknowledge complaints, manage correspondence onto the document management system (Civica) and manage the Team's email inbox. This is now being done on a rota system by members of the Team, which inevitably impacts on their capacity to carry out their substantive roles. At the present time, because it is important to reply to customers' emails and new cases, the Team is managing to keep up with this work. Consideration has been given to whether assistance from the Development Management Technical Support team can be provided for a short period until recruitment into the vacant roles is completed. This will be difficult however since that Team is having to manage with vacancies, has statutory duties to complete, and is being supported by contracting staff.
- 3.7.4 The Enforcement Team has regular morning meetings to ensure consistency of work, enable discussion on complex cases, and quicker decisions on cases. The Team has also met to review the potential streamlining and effectiveness of processes.

### **3.8 Expanding duties**

- 3.8.1 The Enforcement Team needs to pick up implementing the permanent enforcement requirements originally introduced by the Business and Planning Act 2020 (BPA20) covering the placement of furniture for the consumption of food and drink on the street. Previously the responsibility of Essex Highways, following changes in the Levelling Up and Regeneration Act 2023 (LURA), which came into force on 31 March 2024, this now falls to Local Planning Authorities. This means that there will be a need to include these complainants in the regime of complainants presently handled by the Team. The LURA does not involve enforcement action and the creation of

offences for street furniture placed in the highway, but rather direct action involving the removal of that furniture. It then must be stored with the intention that the owner will have to pay to have it released. If the furniture is not collected, then after three months it can be sold to try and recoup some or all the costs of collection and storage.

- 3.8.2 The Planning Enforcement Team does not have either Officers trained in direct action nor the vehicles or facilities to carry out the actual direct action; the Team will only be able to investigate and correspond with the owners of sites. The impact of this further duty on the capacity of the Team and other planning enforcement cases is not yet known. It is inevitable that at least initially it will impact that available capacity and drive up the number of open cases. It is possible that the physical enforcement work will have to be carried out by another department of the Council or contracted out to an external specialist such as a bailiff; however, this has still to be decided.
- 3.8.3 This new type of direct action will have to be included in an updated Planning Enforcement Policy and following legal advice an amendment to the delegated powers set out in the Council's Constitution prior to it being implemented. The Council will also have to consider establishing a Direct Action Budget to cover the costs of furniture removal in the first place. New risk assessments and a cost analysis of the function and how best to do it are also required. Reports will be presented to the Strategy and Resources Committee regarding this in due course.

#### **4. CONCLUSION**

- 4.1 The WG has continued to receive regular updates from Officers on this watching brief item and now wishes to bring to the attention of the Committee issues of concern around performance which have been directly affected by on-going staffing difficulties.
- 4.2 The WG is mindful that planning enforcement is a high-profile service and acknowledges that communication is vital with a particular need to keep Parish and Town Councils updated. The Enforcement Team will, if requested, meet Town and Parish Councils and it has been suggested that the mapping app available to Members could be offered to Parish and Town Councils, subject to further discussion.
- 4.3 Officers also consider that it would be beneficial to assist Members to offer some Planning Enforcement training particularly around taking formal enforcement action.

#### **5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2025 - 2028**

##### **5.1 Delivering good quality services.**

- 5.1.1 Thorough scrutiny processes support improved performance and efficiency which in turn will contribute to the quality of services provided, and functions undertaken by the Council.

## 6. IMPLICATIONS

- (i) **Impact on Customers** – None directly, but individual scrutiny reviews will enable the impact on customers to be assessed.
- (ii) **Impact on Equalities** – Equalities are considered as part of the reporting on review work undertaken by Officers.
- (iii) **Impact on Risk (including Fraud implications)** – Scrutiny reviews enable potential Corporate Risks to the organisation and their mitigation to be identified.
- (iv) **Impact on Resources (financial)** – Scrutiny reviews offer the potential for an assessment of financial impact to the organisation.
- (v) **Impact on Resources (human)** – Scrutiny reviews offer the potential for an assessment of any resource impact to the organisation.
- (vi) **Impact on Devolution / Local Government Re-organisation** – None.

Background Papers: None.

Enquiries to: Stuart Jennings, Corporate Governance Project Officer.

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