



**REPORT of  
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

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**to  
PLANNING AND LICENSING COMMITTEE  
7 MARCH 2019**

**UPDATE ON PLANNING ENFORCEMENT**

**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to inform the Committee of the recent performance in relation to planning enforcement matters. The statistical analysis relates to a three month period (September, October and November 2018) after the team was fully staffed.
- 1.2 The purpose of this report is to provide a high-level overview of the performance of the team. Queries regarding specific enforcement cases will be covered in the through the relevant Area Planning Committee Enforcement meetings. These are scheduled to take place on a six monthly cycle and are the current round of meetings is currently being confirmed.

**2. RECOMMENDATION**

That the content of this report be noted and comments provided on the performance of the Local Planning Authority in relation to planning enforcement.

**3. SUMMARY OF KEY ISSUES**

- 3.1 This report is for Members' information only, but particular attention is drawn to the Council's current performance in dealing with planning enforcement cases.
- 3.2 This report provides information in relation to case numbers by the relevant Committee / area, overall performance at appeal and some recent more detailed information regarding specific cases already within the public domain.
- 3.3 **Background**
  - 3.3.1 Enforcement action can only be taken when there is a breach of planning control. This is defined the "carrying out of development without the required planning permission" or "failing to comply with any condition or limitation subject to which planning permission has been granted".
  - 3.3.2 Enforcement powers are discretionary. When deciding whether or not to take enforcement action the Council has to decide whether it is expedient to do so (section 172(1)(b) of the Town and Country Planning Act 1990). The key test is whether

the breach of planning control has, or, if left unabated in the future could, unacceptably affect public amenity, safety etc. To help decide this, it is necessary to consider if planning permission would have been granted for the development had it been the subject of a planning application. However, it is important to note that the task of investigating an alleged breach of planning control and coming to an informed decision on the expediency of taking action is not discretionary in nature.

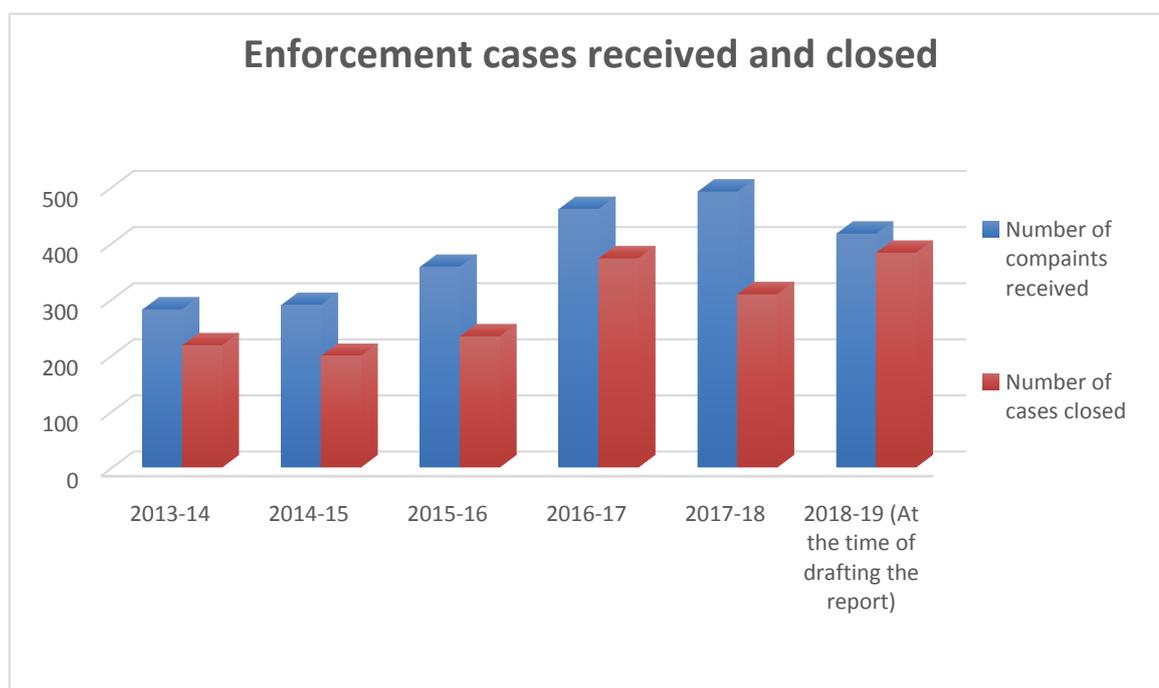
3.3.3 A Corporate Fraud and Enforcement Team was formed in October 2015. This new team was designed to provide a more holistic approach to enforcement matters for Maldon District Council; one of the primary roles that this team provides is dealing with complaint regarding and breaches of planning control.

3.3.4 The original team contained individuals of limited planning experience and it took some time for the team to bed in. Over the last three years the skills, knowledge and understanding of the legislation has grown exponentially. Unfortunately, the team has been unable to work at full capacity due to sick leave and carrying a number of vacancies. Since July 2018 the team has been fully staffed. Although a temporary decision has been made to replace the Team Leader post with a Principle Planning Officer in an attempt to add additional planning expertise to the team.

### 3.4 Performance

3.4.1 Historically, the volume of complaints in relation to alleged breaches of planning control had been relatively consistent. However, in the last five years there has been a demonstrable increase in the complaints with a percentage increase of some 27% between the 2014 / 15 and 2015 / 16 as well as a 70% increase between 2014 / 15 and 2017 / 18. The number of enforcement cases closed has also increased (56% increase between 2014 / 15 and 2017 / 18). This resulted in the number of open enforcement cases continuing to grow.

3.4.2 It is also worth noting that there has been a continued increase in cases received this financial year, as of 7 February 2019, compared to the same stage last year.



3.4.3 As highlighted above the team has been fully staffed since July of last year and there had been a conscious effort to upskill the planning aspect of the team. It was therefore considered appropriate to review these changes and to see if this resulted in a real and demonstrable impact on performance of the team. The review looked at a quarter of the year after the new officers would have had an opportunity to undertake a review of the backlog and prioritise caseloads.

	<b>Total for District</b>	<b>Central</b>	<b>North West</b>	<b>South East</b>
Number of active enforcement complaints on 18 December 2018	568	103	173	291
Number of new cases received between 1 September 2018 and 1 December 2018	110	26	37	46
Number of closed complaints between 1 September 2018 and 1 December 2018	222	67	72	83
Number of new cases received in November 2018	35	7	11	17
Number of closed complaints in November 2018	83	34	26	24
Number of prosecutions instigated between 1 September 2018 and 1 December 2018	10	3	1	6
Number of Enforcement Notices between 1 September 2018 and 1 December 2018	9	1	4	4
Number of Breach of Condition Notices (BCN) served between 1 September 2018 and 1 December 2018	2	0	1	1
Number of Planning Contravention Notices (PCN) served between 1 September 2018 and 1 December 2018	16	5	6	5

3.4.4 As can be seen from the table above between September and December 2018 the team were able to close 222 cases, this was considerably larger, over double, the number of cases that the Council received in that time.

3.4.5 It should also be noted that in this same period eighteen planning applications were received in an attempt to regularise breaches of planning control due to ongoing discussions and negotiations between the team and the Applicants.

### 3.5 Method

3.5.1 It is considered that the increase in performance has been for two reasons. Firstly, and most obviously the team has been fully staffed which has increased the capacity of the team. Secondly though, the structure of the team has been slightly amended to

allow for a more specific skillset that allows for easier prioritisation of planning enforcement cases and also a more varied level of skills.

- 3.5.2 The structure of the team is now 1 Enforcement Assistant, 2.5 Full Time Equivalent (FTE) Corporate Fraud and Enforcement Officers, 1 Planning Officer and 1 Principle Planning Officer. The new structure allows the Enforcement Assistant to prioritise initial site visits and to deal with the most basic cases; an early site visit also allows the Council to more accurately assess the complexity of the alleged breach of planning control. The provision of the Principle Planning Officer within the team allows for an individual with a greater degree of development management experience to sit within the team and to be readily available to provide guidance and assistance to the more junior team members; they also pick up the most complex cases which they are able to deal with more quickly due to their experience. The Planning Officer offers a similar, but more basic, role to that of the Principle Planning Officer; they also shoulder the main burden regarding the drafting of enforcement notices and the report seeking authorisation to take enforcement action that is also required. This allows for the Corporate Fraud and Enforcement Officers to deal with the majority of cases without having to deal with either the most basic or most complex cases to improve productivity with the team.
- 3.5.3 appear that the system weighs in favour of the individual being investigated due to the length of time that can be required to lead to a successful resolution. However, there has been a conscious effort to deal with individuals that attempt to frustrate or undermine the planning process. It is hoped that such an approach will lead to smoother process due to people being aware that there are significant repercussions for undertaking a tactic such as this. This can be seen through two recent prosecutions; the first related to a successful prosecution following a false statement being made as part of a recent planning application submitted to prove that an unauthorised development was immune from enforcement action at Lords Acre Nursery in North Farnborough. Whilst more recently Maldon District Council successfully prosecuted a person for failing to respond to a Planning Contravention Notice (PCN) that was sent to them regarding a suspected breach of planning control at Bridgemarsh Marina, Althorne.

#### **4. CONCLUSION**

- 4.1 The Corporate Fraud and Enforcement Team has now bedded in and the officer have demonstrated a real increase in knowledge and experience. The team being at full capacity, alongside the additional planning expertise, has resulted in a marked improvement in the number of planning enforcement cases resolved.

#### **5. IMPACT ON CORPORATE GOALS**

- 5.1 Having an effective and planning service contributes to two Corporate Goals i.e. 'Protecting and shaping the district' and, 'Delivering good quality, cost effective and valued services'.

## 6. IMPLICATIONS

- (i) **Impacts on Customers** – The ability to ensure that enforcement process, including enforcement action where appropriate, is taken in a timely, open and transparent way.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.
- (iv) **Impact on Resources (financial)** – Additional Staff resources.
- (v) **Impact on Resources (human)** – To continue to be identified through the management of the service.
- (vi) **Impact on the Environment** – Failure to have an effective enforcement policy or service could result in an increase in unauthorised developments and delays in investigating breaches in planning control could lead to adverse impacts on the environment resulting in long term harm which might be difficult to mitigate.

Background Papers: None.

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