

Strategic Planning Board

Date of Meeting: 29 July 2020

Report Title: Performance of the Planning Enforcement Service 2019-2020

Portfolio Holder: Councillor Toni Fox - Planning

Senior Officer: David Malcolm - Head of Planning

1.0 Report Summary

1.1 The purpose of this report is to provide the Strategic Planning Board with information relating to the activities and performance of the Council's planning enforcement service during the period 1st April 2019- 31st March 2020 including a status report on those cases where formal enforcement action has already been taken.

2.0 Recommendation

2.1 Members are requested to note the content of the report.

3.0 Reason for Recommendation

3.1 The information contained within the report is to update Members on performance only.

3.0 Background

3.1 Introduction

3.2 Members will be aware that there has not been a performance report for some time owing to various resourcing issues. However in the interim training has been provided on two occasions to Members in relation to enforcement during which some performance figures were provided.

3.3 Officers continue to strive to improve the service provided not only in terms of service delivery but also in accessibility to copies of notices online and an online enforcement register. It is anticipated that the new computer

system which is currently undergoing the procurement process will facilitate this. It should also allow for more in depth performance statistics to be provided to assist in performance management.

3.4 The overarching Council wide enforcement policy has recently been reviewed and updated. Service specific polices are also now under review, including the planning enforcement policy.

3.2 Report Format

3.3 The information contained in this report is divided into three sections:

3.4 Paragraphs 3.6 - 3.23 provide a summary of investigative activity and formal enforcement action undertaken during the financial year 1st April 2019- 31st March 2020.

3.5 Section 4 provides an update of those cases where formal enforcement action has been authorised and taken place.

Section 5 Advises on future reports

3.6 **Reported Information**

CHART 1

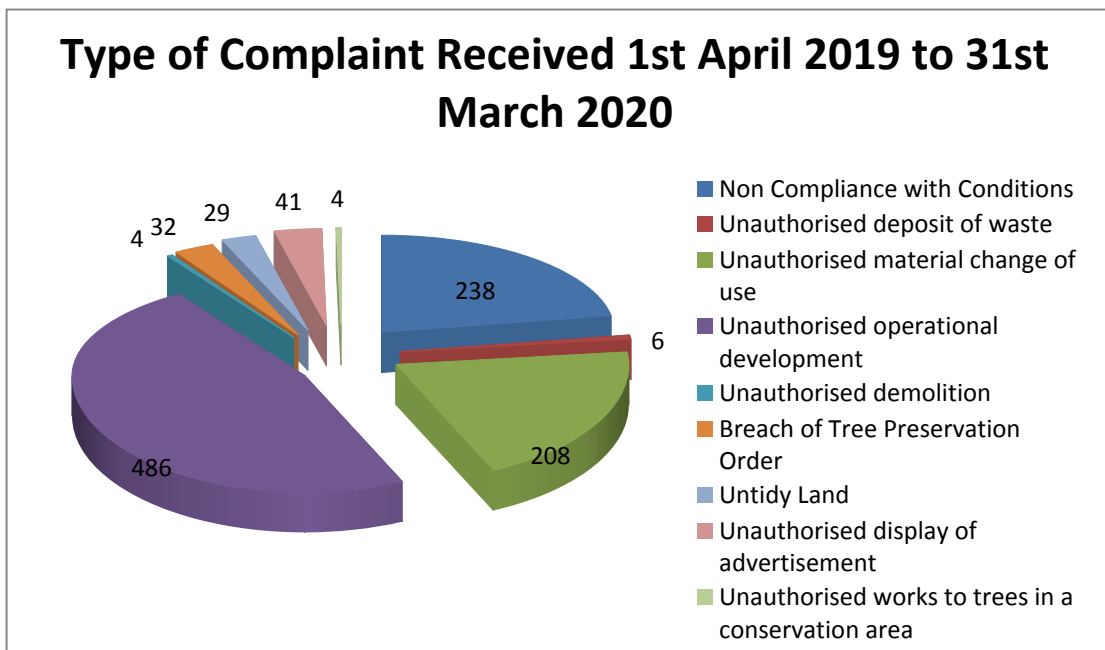
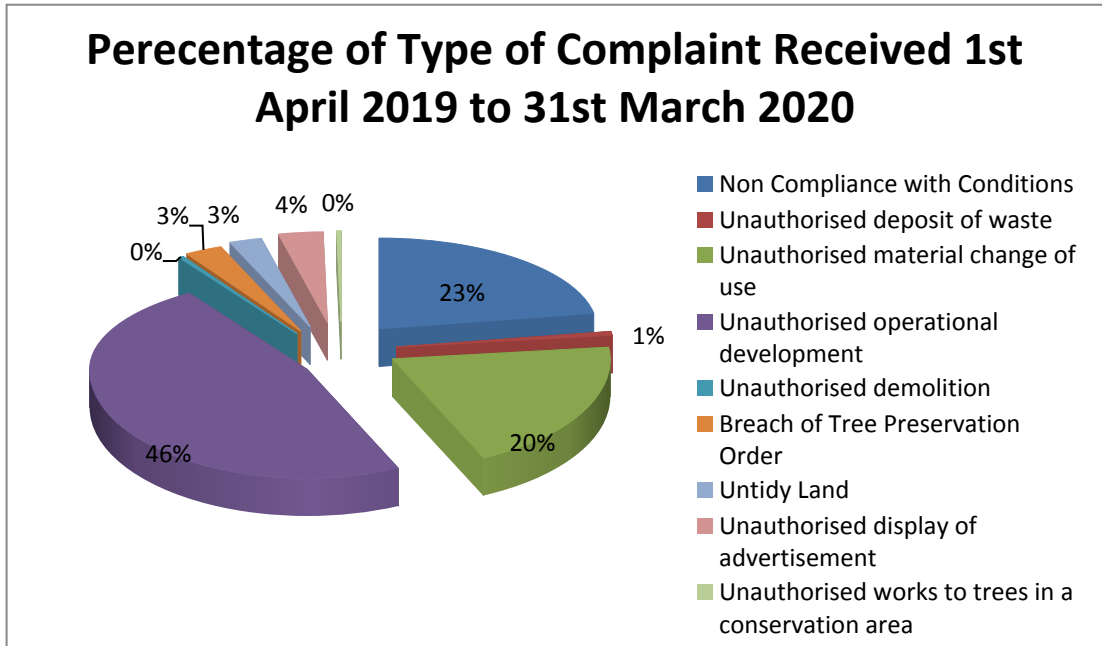


CHART 2



- 3.7 It is of interest to note that the highest proportion, 46%, of reported breaches relate to unauthorised operational development. However, of all reported breaches 59% did not equate to a breach of planning control. This can be explained in part by the type of development which can be carried out under permitted development rights. More recently these rights have been extended quite significantly which has resulted in landowners being able to carry out significant operational development or material changes of use without any requirement for permission from the Local Planning Authority (LPA). Where development falls within the tolerances of permitted development the LPA has no powers to act regardless of the impact it may have on landowners close by.
- 3.8 A total of 1,048 new cases were opened during the reporting period. During that period also a total of 977 cases were closed. This represents a high flow through of work during the 12 months reported. Of those cases 76% were closed within 6 weeks with 79% being closed with 8 weeks. This represents a swift resolution to the majority of reports where no breach has been identified. The reasons for closure are broken down in Charts 3 and 4 below.

CHART 3

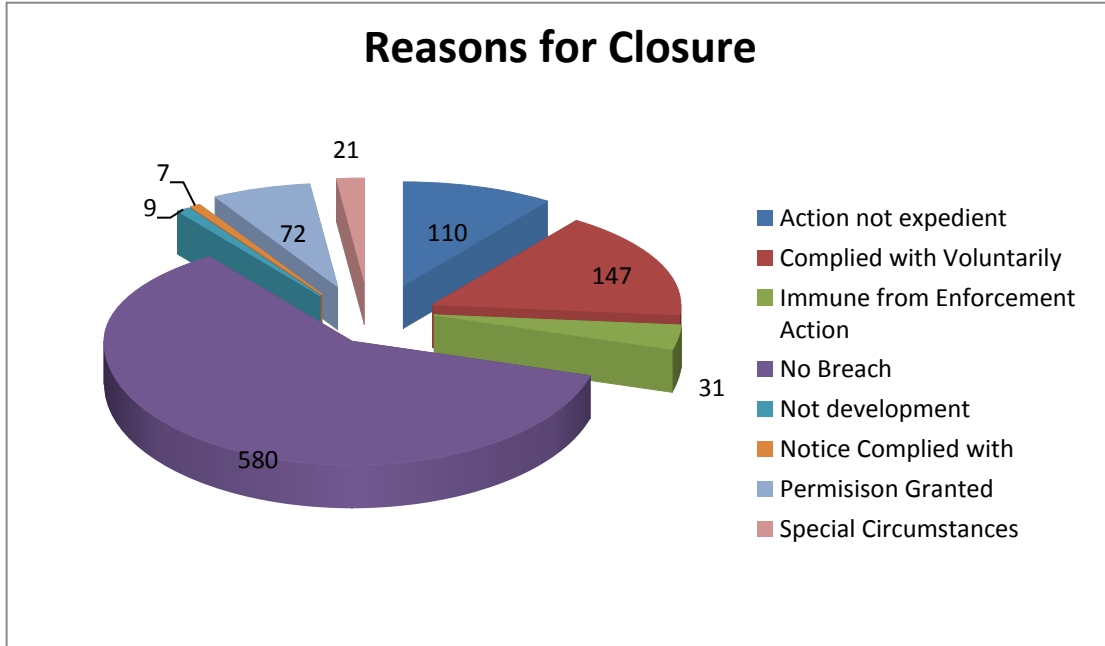
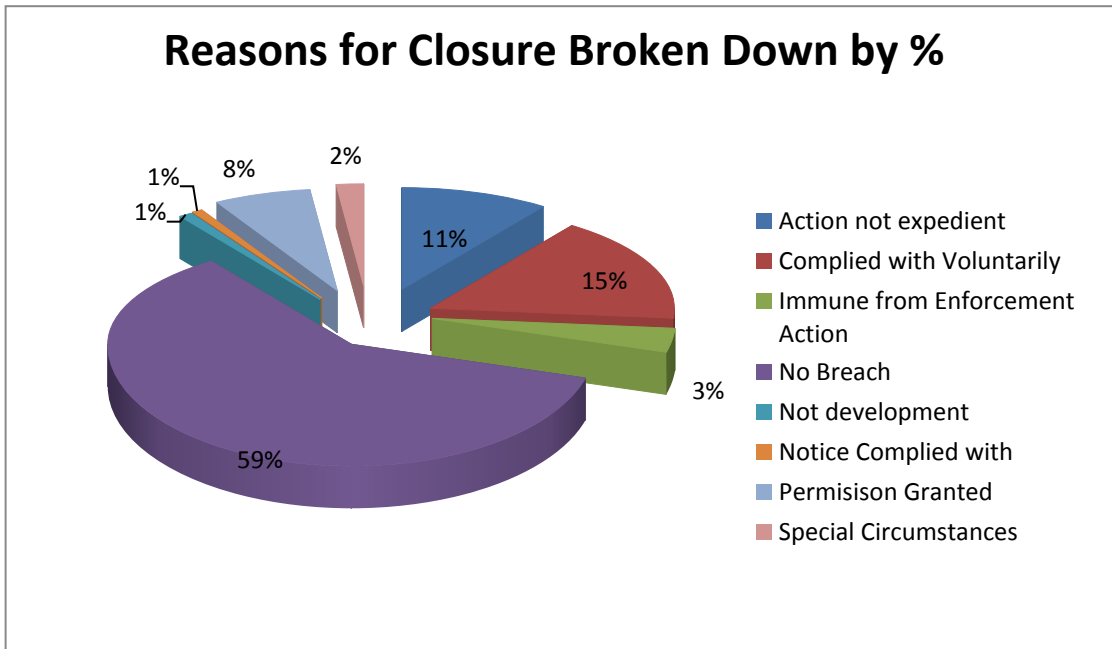


CHART 4



3.9 Enforcement cases receive an initial priority when they are received. This priority is based on the degree of harm likely to be caused by the alleged breach and determines the timescale within which officers endeavour to carry out their first visit. (It is not always necessary to carry out a site visit).

Priority 1 High – 1 working day

Where irreparable harm may result -Site visit within one working day

- Unauthorised works to listed buildings
- Unauthorised demolition in a Conservation Area
- Building work causing immediate and irreparable harm to an area of land which has special protection. i.e. something which could not be put right
- Building work causing serious danger to the public (This does not include unsafe working practices or parking of operatives or delivery vehicles on the highway these are matters for the Health and Safety Executive or the police respectively).
- Unauthorised works to or affecting trees covered by a Tree Preservation Order or in a Conservation Area.

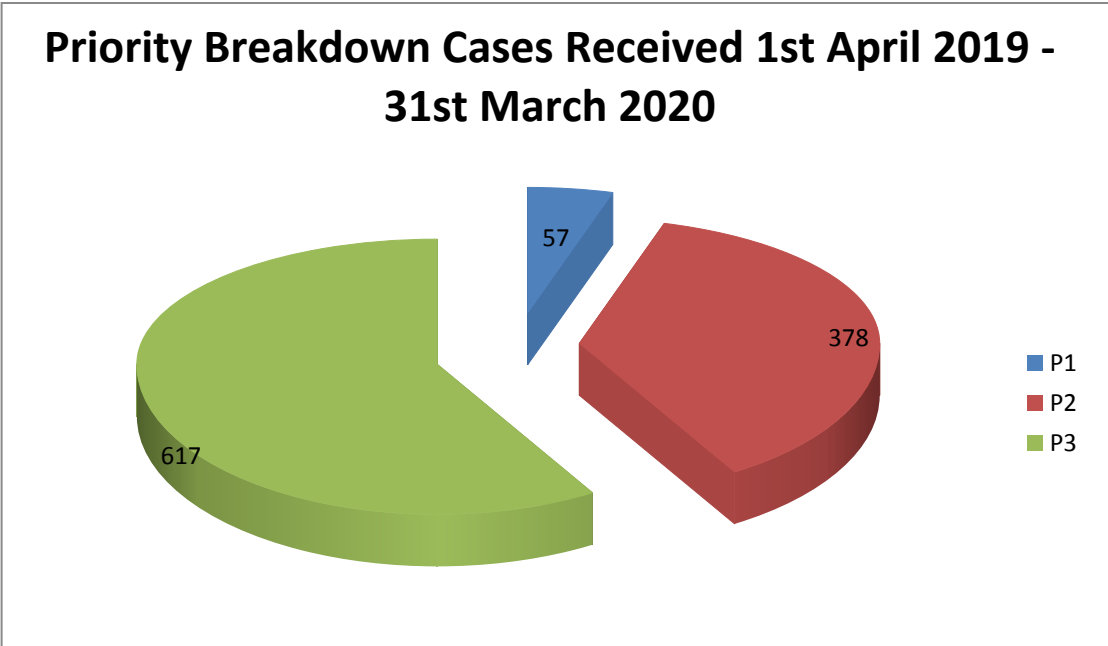
Priority 2 Medium – 5 working days

Where a significant level of harm may result – Site visit within 5 working days

- Building work already in progress
- Building work which is potentially immune from enforcement action within 6 Months (after a period of 4 years in relation to operational development and 10 years in relation to a material change of use).
- Building work causing serious harm to the character or appearance of an area or which may result in unacceptable noise or traffic generation or cause serious harm to the environment
- Breaches of condition/non compliance with approved plans which is causing serious harm e.g. as a result of noise and disturbance or where the change to the development is so significant as to be detrimental to it's appearance or result in a seriously detrimental effect on neighbouring properties (this does not include any perceived detriment to the value of nearby properties)
- Building work which represents a clear breach of planning policy and is unlikely to be granted planning permission.

Priority 3 Low – 15 working days

- Other building work which is complete
- Building work not causing significant harm to its surroundings or the environment
- Advertisements
- Breaches of condition/non compliance with approved plans causing no significant harm to the character or appearance of an area or which have no discernible impact
- Building work which is likely to be permitted development it does not need the permission of the LPA
- Minor domestic building work e.g. fences, small outbuildings, plus the erection of satellite dishes
- Untidy Land



3.10 Service Improvement

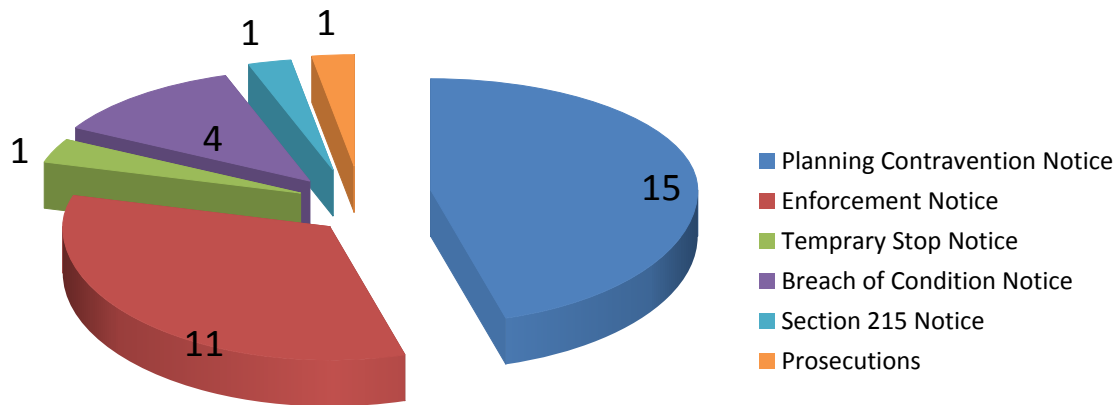
3.11 In order to assist customers understanding of why their report has been allocated a particular priority the text in the above explanations has been embedded on the reverse of the standard acknowledgement letter. Details of the link to the current service specific enforcement policy has also been provided within the letter. The aim of the additional information is to further manage customer expectations of what the service can and cannot deliver.

3.12 NOTICES SERVED

3.13 A total of 33 notices have been served during the reporting period and Chart 5 breaks the notices down by type.

CHART 5

Notices Issued 1st April 2019 to 31st March 2020

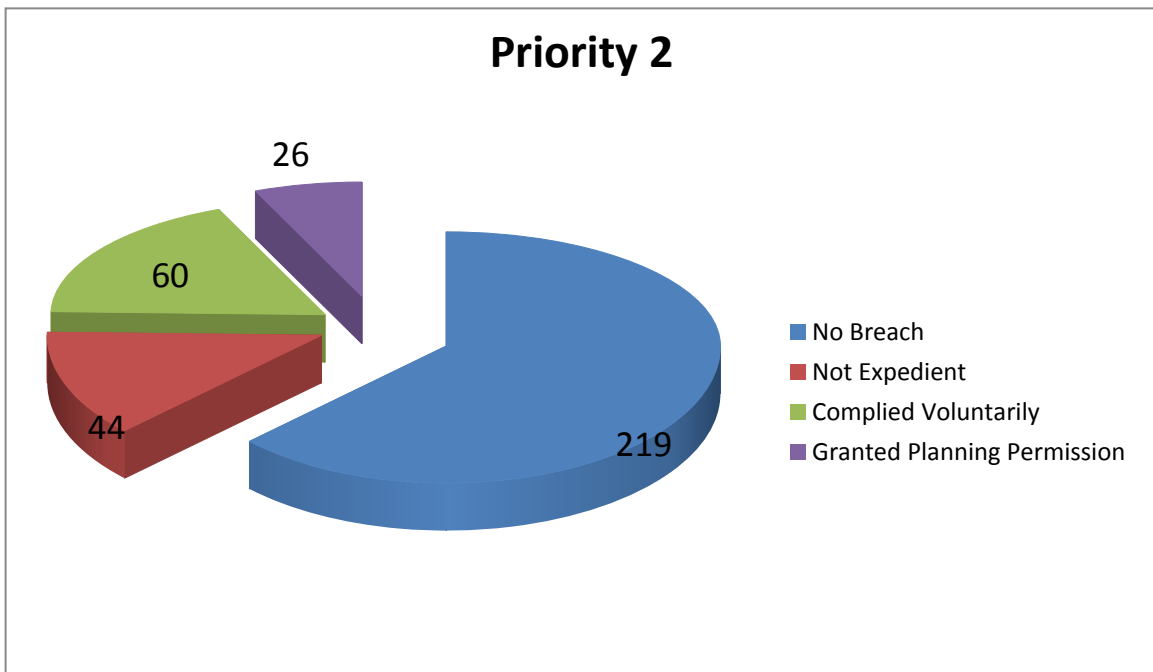
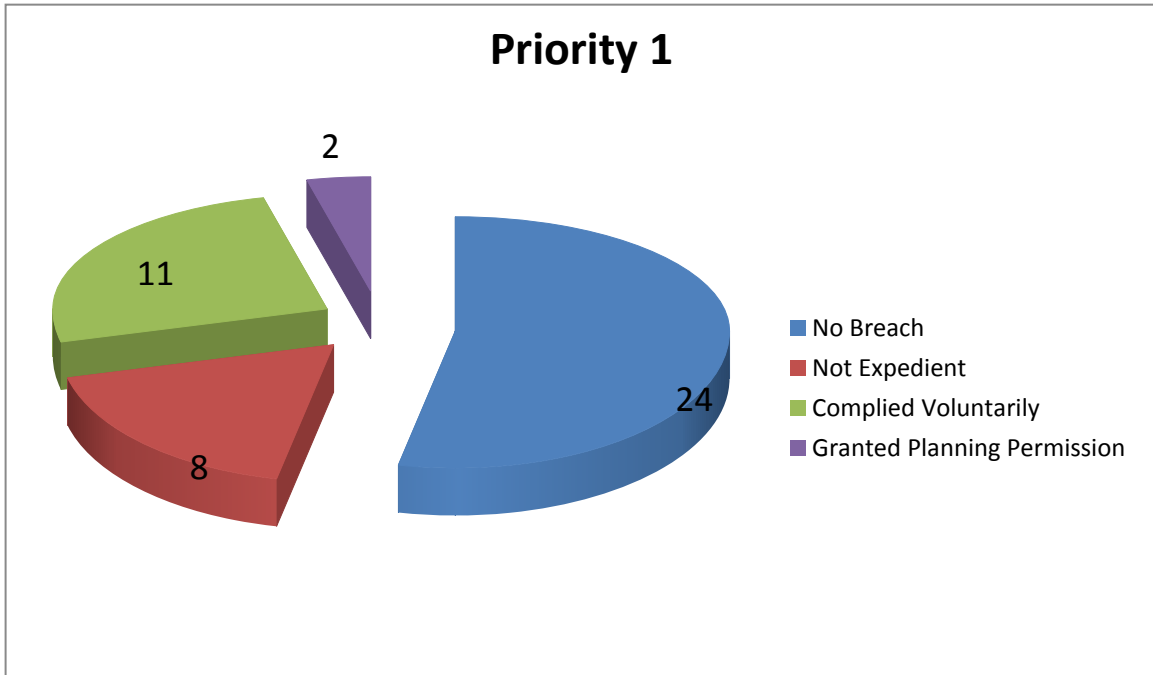


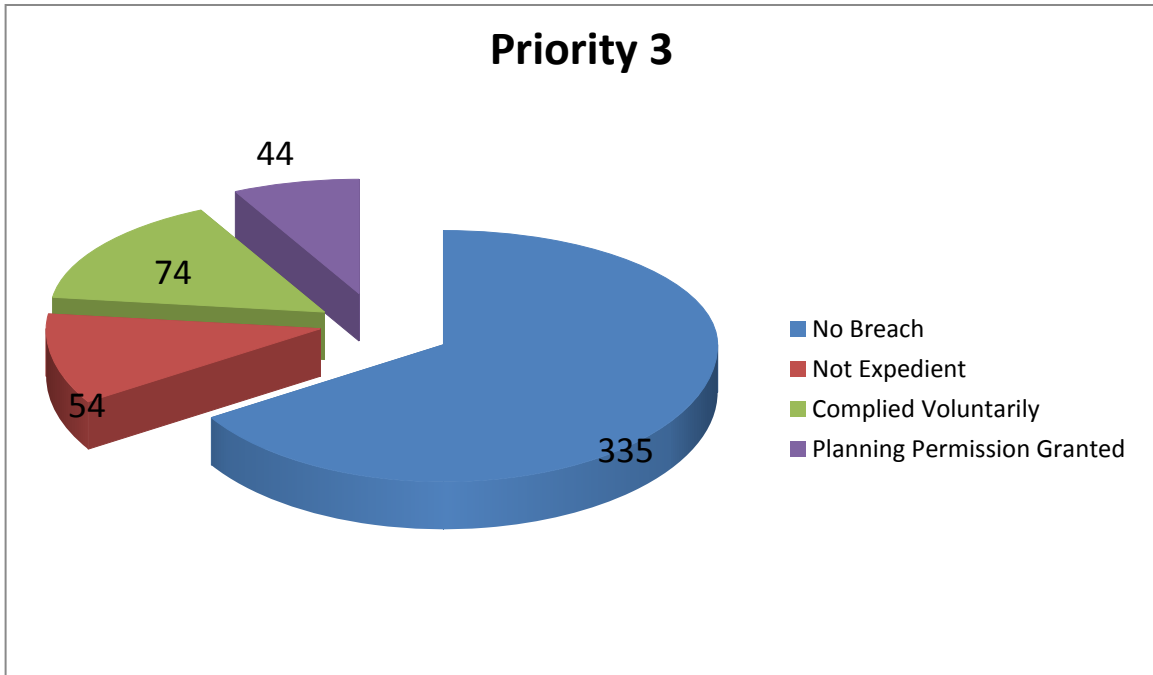
- 3.14 From a total of 11 enforcement notices issued 6 notices have been appealed or are currently the subject of an appeal. None of the appeals have yet been decided however one was withdrawn after the hearing had taken place. In these exceptional circumstances the Council has put in an application for an award of costs against the appellant. No decision has yet been received in relation to the cost application.
- 3.15 The current pandemic has resulted in and will continue to result in delays in decisions regarding enforcement appeals. For a period of time Inspectors were not carrying out any site visits. It appears that some are now being carried out but only where they relate to appeals being heard by way of written representations and where the visits can be unaccompanied. However this is a fluid situation.
- 3.16 It is likely that any enforcement appeal which is due to be determined by way of and Informal Hearing or Public Local Inquiry will encounter significant delays. This is due, not only because of ongoing social distancing requirements, but also because enforcement appeals were not included in the 2019 independent review of the length of time it takes to conclude

- appeal inquiries. They are not therefore included in the performance figures for PINS and it is likely that the majority of resources will continue to be directed to planning rather than enforcement appeals and that will apply to the clearing of the backlog building up as a result of the Covid-19 pandemic.
- 3.17 The impact of this being that the end to end enforcement process is likely to become more protracted. It is already a source of frustration to members of the public that where an appeal has been lodged and as a result an enforcement notice does not come into effect. A consequence of this being that an unauthorised material change of use can continue to operate unchallenged by the LPA or unauthorised operational development can remain resulting in the continuation of the resultant harm.
- 3.18 In order to make an assessment of the success rate of enforcement notices at appeal it is necessary to look back to the previous financial year 1st April 2018 to 31st March 2019. During that period out of the 27 notices issued 11 were enforcement notices (including one listed building enforcement notice). 6 Notices were subject to appeal. 5 decisions have been received, all 5 appeals were dismissed which represents an excellent success rate.
- 3.19 In order to sustain this impressive appeal record it is imperative that we continue to only issue enforcement notices where there is clear and demonstrable harm resulting and where the LPA can present a robust defense and would not be exposing itself to an award of costs. Notices cannot be issued purely on the basis that a landowner has failed to follow the correct procedure for obtaining planning permission. The issue of a notice cannot be used as a punitive act. Any decision to issue a notice must be based on sound planning reasons having regard to national and local planning policy and where development is clearly inappropriate and even with the imposition of conditions it could not be made acceptable.
- 3.20 It is acknowledged that many residents and Members become frustrated with the perceived lack of speed in progressing enforcement investigations. However, it is imperative that all investigations are thorough and any decisions made are based on sound evidence. Where possible the progress of cases is shared with Members and residents, however, for various reasons, including data protection or the risk of undermining the Council's case, it is not always possible to share information whilst an investigation is ongoing. In addition, and for reasons outlined above, there can be a period of the process where timeframes are outside the control of the LPA, this includes where matters are going through the courts.
- 3.21 There is a significant amount of work involved in the preparation of reports for authority to issue a notice/institute prosecution proceedings and appeal statements. This work is resource intensive, but becomes 'hidden/lost' work when formal enforcement action or legal proceedings are halted at a late stage where for example compliance is achieved voluntarily.

3.22 Reasons for Closure Broken Down By Priority

3.23 Of those cases which have been closed during the reporting period the following is a breakdown of the reasons for closure. You will note that in each priority by far the greatest proportion of cases closed were as a result of no breach being identified.





4.0 Update on Formal Enforcement Action Already Taken

4.1 Whilst the majority of the work of the enforcement team involves investigating reports of suspected breaches of planning control, the Appendix attached to this report details the status of those cases where it was appropriate to take enforcement action and serve a formal Notice.

4.2 The Appendix contains 77 cases. A breakdown on the status of the 77 cases at 1st June 2020 is as follows

- 26 have already been closed
- 2 are the subject of active legal proceedings
- 7 have resulted in successful convictions
- 32 were the subject of appeals which were dismissed
- 5 are the subject of an appeal and a decision is awaited

The cases are listed in Ward order.

5.0 Future Reports

- 5.1 The next report will be presented in November 2020 and will contain information for the first two quarters of 2020/2021.

6.0. Implications of Recommendation

6.1 Legal Implications

- 6.1.1 No direct implication

6.2 Finance Implications

- 6.2.1 No direct implication

6.3 Policy Implications

- 6.3.1 No direct implication

6.4 Equality Implications

- 6.4.1 No direct implication

6.5 Human Resource Implications

- 6.5.1 No direct implication

6.6 Risk Management Implications

- 6.6.1 No direct implication

6.7 Rural Communities Implications

- 6.7.1 No direct implication

6.8 Implication for Children & Young People/Care for Children

- 6.8.1 No direct implication

6.9 Climate Change -

- 6.9.1 No direct implication

6.10 Public Health Implications

- 6.10.1 No direct implication

7.0 Ward Members Affected

7.1 All wards are affected

8.0 Access to Information

8.1 The following document is appended to this report

Appendix 1 – Status report on cases where formal enforcement action has been taken.

9.0 Contact Information

Any questions relating to this report should be directed to the following officer.

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