

OPEN

Southern Planning Committee

1st May 2024

Planning Enforcement Performance Update

Report of: David Malcolm, Head of Planning

Ward(s) Affected: All

Purpose of Report

- 1 To update Members on the performance of planning enforcement during the last quarter of 2022/2023 and the year of 2023/2024.
- 2 The report is for information only.

Executive Summary

- 3 The report provides statistical information in relation to the performance of planning enforcement during the last quarter of 2022/2023 and the year 2023/2024. It includes information in relation to the number of notices served or other actions taken in addition to quantifying the workflow through the service during this time. The report also includes a status report on those cases where formal enforcement action has been taken.

<p style="text-align: center;">RECOMMENDATION</p>
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<p>The Strategic Planning Board is requested to:</p>
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| <ol style="list-style-type: none">1. Note the content of the report. |
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Background

- 4 The last performance report was presented to Members of the committee in March 2023. A further update report was scheduled for April 2024.
- 5 Whilst overall the number of alleged breaches reported fell during 2022, 871 compared to 1069 in 2021, it appears that the number of reports is again on the increase with 982 being received in 2023. So far in 2024, 233 alleged breaches have been reported.

Quarter	Cases Opened	Cases Closed
January 2023 - March 2023	252	183
April 2023 - June 2023	239	146
July 2023 - September 2023	270	167
October 2023 - December 2023	209	168
January 2024 – March 2024	233	154

The following table breaks down the number of complaints received by type. Members will note that by far the highest number relate to operational development.

Nature of Complaint	Jan 2023 - Mar 2023	Apr 2023 - Jun 2023	Jul 2023 – Sep 2023	Oct 2023 – Dec 2023	Jan 2024 - Mar 2024
S215	2	5	6	3	4
Adverts	1	4	2	8	8
Trees in Conservation Areas	1	1	0	0	0
Non-compliance with conditions	47	37	36	31	44
Material change of use	59	46	66	48	53
Operation Development	127	142	150	114	112
TPO	15	9	10	5	11

- 6 The following table sets out the reasons for closure of cases per quarter. A common thread running through all quarters is that the majority of cases are closed because the matter reported did not represent a breach of planning control. In the main this would be as a result of the development being permitted development under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015. Members will no doubt be aware that the provisions of the Order have been significantly expanded since 2015 with further amendments proposed. This effectively means that less development falls within the control of the Local Planning Authority (LPA). This trend means that it is increasingly difficult to manage public expectations as lack of action is still often seen as a failure the LPA to act.

Reason for Closure	Jan 2023- Mar 2023	Apr 2023- Jun 2023	Jul 2023 – Sep 2023	Oct 2023 – Dec 2023	Jan 2024- Mar 2024
Not Expedient	28	14	18	13	25
Complied Voluntarily	35	20	25	25	36
No Breach	85	98	101	116	79
Not Development	5	3	1	2	0
Permission Granted	23	10	16	8	7
Special Circumstances	3	3	3	2	3
Immune	0	0	1	0	1

- 7 The third quarter of 2023 saw a significant number of notices being issued. This included 5 on one site. In this instance it was necessary to stop works which were causing or likely to cause significant demonstrable harm to trees within a Conservation Area. A Planning Contravention Notice, two Temporary Stop Notices, an Enforcement Notice and Stop Notice were issued in quick succession. This resulted in officers being pulled away from dealing with other matters for a period of time which, of itself, can lead to additional backlogs. However, at times resources must be channelled to those cases where clear and demonstrable harm is being or is likely to be caused. This can often be to the detriment of progressing other matters where a similar level of harm cannot be demonstrated.
- 8 It is of note that there may be some stages within an investigation where information cannot be publicly shared because it may prejudice the Council's case.
- 9 The Following table provides information on the number of notices served with the reporting period. Further details in relation to the notices can be found at Appendix 1 to this report. For ease of reference notices served since the last report are in red.

Action Type	Jan 2023 - Mar 2023	Apr 2023 - Jun 2023	Jul 2023 – Sep 2023	Oct 2023 – Dec 2023	Jan 2024 - Mar 2024	Total
PCN	3	5	11	2	2	24
Enforcement Notice	1	6	8	5	4	24
Temp Stop Notice	2	0	3	0	0	5
Breach of Condition Notice	1	0	2	0	1	4
Listed Building Enforcement Notice	0	1	0	1	0	2
Injunction	0	0	0	0	0	0
S215 Notice	0	0	0	0	0	0

- 10 The above table demonstrates that there has been significant amount of activity in relation to the number of notices which have been served throughout the reporting period. However, it should be noted that notices are only served in a very small percentage of cases and are done so as a last resort in most instances. Every effort is made to secure a remedy through negotiation and with the agreement of the alleged transgressor in the first instance. This is usually the swiftest and most effective way to deal with breaches of planning control. Many of which can be regularised through the submission of a planning application and therefore brought within the control of the Local Planning Authority.
- 11 So far 10 appeals have been lodged in relation to the Council's decision to issue an enforcement notice. At present the Planning Inspectorate (PINS) are experiencing capacity issues, particularly when dealing with enforcement appeals. This is having a direct effect on the time it is taking them to reach a decision on an appeal. The LPA has received a letter from PINS in relation to a number of appeals advising that they are currently unable to allocate to an Inspector to undertake the necessary site visit and as a consequence they can give no indication when a decision may be reached. This is an extremely frustrating situation and one which the LPA is unable to influence in any way. To date only 1 decision has been received in relation to those 10 appeals, it was dismissed, and the notice was upheld. In addition, one appeal has been withdrawn.
- 12 By way of an example of the delays being experienced an appealed notice issued in March 2022 only received a decision in March 2024. While not all as a result of delays by PINS, and partly due to the appellant albeit failing to agree to a rescheduled hearing date within a reasonable timescale, it shows the timeframes involved. In another example a notice issued in October 2021 did not receive a decision until October 2023.
- 13 The above demonstrates how cases can become extremely protracted due to external factors which can be extremely frustrating for Members, residents and officers alike.
- 14 Similar circumstances can arise during prosecution proceedings. It is not uncommon for a first hearing to be adjourned with no plea having been entered. If at a subsequent hearing a not guilty plea is entered a further adjournment for a trial date will be necessary. This can result in there being many months between an initial court date and decision.
- 15 Members may recall a press release from February in relation to a landowner and his wife who had failed to comply with the requirements of a high court injunction. Those requirements included the cessation of any residential use of the land by 15th July 2024. All buildings included in the injunction must be demolished by 26th January 2025. All a timetable for all other requirements of the order must be agreed with the Council by no later than 31st August 2024. The judge imposed a 12-month suspended sentence. If the landowner fails to meet the requirements by the timescales set and further committal proceedings are successful, he will have to serve a term in prison.

- 16 Whilst both parties were found guilty the judge did not impose any sentence on the wife as he did not consider there to be a sufficient level of culpability on her part.
- 17 The above clearly demonstrates why injunctions are very the last resort tool available to planning enforcement and should only be used in a situation whereby the LPA is satisfied that a judge may be willing to impose a custodial sentence having regard to the level of culpability.
- 18 Some members will recall that reference was made in the previous report to an outstanding payment of court costs amounting to £18,597. The Council sought a charging order to recover these costs as the defendant had failed to pay within the required 21 days. The matter was heard in the magistrates' court in Telford. A charging order, a way of securing a debt against a debtor's assets, was made and an application has been made to HM District Land Registry to have it placed as a restriction on the title. Since the charging order was made additional costs have been awarded to the Council as a result of further proceedings. An application is to be made to add these to the order. These include £10,000 in relation to an unsuccessful appeal to the Court of Appeal in London on 12th March 2024. The appeal was against the decision of the High Court to commit him to prison.
- 19 The migration to the new Development Management computer system remains ongoing. When fully implemented it should be possible to streamline ways of working and improve capability to keep Members and customers updated on more regular basis.

Consultation and Engagement

- 20 Consultation and Engagement has not been required because the purpose of this report is for information only.

Reasons for Recommendations

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

Other Options Considered

- 22 N/A

Implications and Comments

Monitoring Officer/Legal

- 23 No direct comments as report is for information only.

Section 151 Officer/Finance

- 24 No direct comments as report is for information only.

Policy

- 25 It is an objective of the Corporate Plan for new development to be appropriately controlled to protect and support our borough and to have robust and effective planning enforcement.
- 26 Service provision should be provided in accordance with the Cheshire East Enforcement Policy and the service specific adopted Planning Enforcement Policy.

Equality, Diversity and Inclusion

- 27 No direct implication.

Human Resources

- 28 No direct implication.

Risk Management

- 29 No direct implication.

Rural Communities

- 30 No direct implication.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 31 No direct implication.

Public Health

- 33 No direct implication.

Climate Change

- 34 No direct implication.

Access to Information	
Contact Officer:	Deborah Ackerley deborah.ackerley@cheshireeast.gov.uk
Appendices:	Appendix 1 – Status report on cases where formal enforcement action has been taken.
Background Papers:	Corporate Plan / Cheshire East Enforcement Policy / Planning Enforcement Policy