

## Task and Finish Review Environment and Prosperity Policy Development Group



## Planning Enforcement Review

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## **Chairman's Foreword**



### **Councillor B Livesley – Chairman of the Task and Finish Group**

The role of the Planning Enforcement Service is to investigate alleged breaches of Planning Control and action as appropriate. Whilst the current driving force for the enforcement function since the service was formed in 2009 has been to meet targets set within the “Planning Enforcement Protocol”, to be an enforcing council, the need for change has been recognised.

It became evident at the start of the review that the computer system was not fit for purpose and that working practices needed to be strengthened. The recommendations within this report will help to achieve the ambitions of the Council and provide a framework and vision on which the service can build to improve service delivery whilst providing clarity within the decision making process.

I would like to thank the group of Members which undertook this review for their hard work and diligence; I would also like to thank the officers for their support.

We commend this report to the Portfolio Holder and request that the recommendations be supported.

## **2.0 Recommendations**

- 2.1 That a revised planning enforcement policy/protocol be developed and implemented. This policy/protocol shall reduce the current 4 priorities to a more relevant 3 which shall include the following;

### **High Priority cases**

Initial Assessment should be made the same day.

### **Medium Priority cases**

Initial Assessment should be made within 5 working days

### **Low Priority cases**

Initial Assessment should be within 15 working days

- 2.2 The service should be encouraged and designed to operate as a single team working across the whole region, thereby creating a culture of case management within the enforcement team, bringing together the responsibility for enforcement with the professional officers of the team. A structure should be developed to provide clear decision making processes, with appropriate delegation to a single lead officer.
- 2.3 Relationships with other services should be further developed to enhance service delivery, with particular emphasis on the development of a service level agreement between the planning enforcement function and the legal services functions. To embrace this approach consideration should also be made to the facility of sharing database information directly between services and providing opportunities for members of the enforcement team to comment on the proposed planning conditions.
- 2.4 New performance reporting measures as detailed within the appendix shall be included within normal day to day practices, with a summary report provided to Council half yearly.
- 2.5 Improved customer interactions through the website as indicated within the appendix table reference per.005.
- 2.6 The provision of technical support staff to support the planning enforcement team should be made available.
- 2.7 The service should be encouraged to improve the use of technology, moving towards a paperless environment where possible and working to adopted operations procedures
- 2.8 The inclusion within the corporate calendar for regular training and briefing sessions for all elected members relating to the planning enforcement function

- 2.9 The service lead will require the development of a service culture, improving customer relationships
- 2.10 The initial performance target of 8 weeks should be considered as a business ambition when dealing with complaints .
- 2.11 Progress of complaints should be reported or made available to members at key stages of the investigation.
- 2.12 Consideration to any ICT issues should be treated as a matter of priority.
- 2.13 Measures considered appropriate to the achievement of the above are highlighted within the table of the appendix.

## **Background**

- 3.1 A report submitted to the Audit and Governance Committee on the 14<sup>th</sup> June 2012 recommended a number of management actions following the internal audit report into the “Waste Transfer Station” (Lyme Green). As part of the report action B7 recommended that a task and finish group on Planning Enforcement be established, with the Environment & Prosperity Scrutiny Committee subsequently agreeing the terms of reference for the group. These included;
- To review the current scope of service delivered through the planning enforcement function
  - To review performance against service standards
  - To review resources aligned to Planning Enforcement and recommend changes in service standards/scope of services and working practices to improve overall performance
  - To review the relationship between Planning Enforcement and other Planning Functions to ensure structures do not compromise conflicting demands
- 3.1.1 The review has considered those aspects as highlighted within the agreed terms of reference.
- 3.1.2 The Members of the Task and Finish Group were:
- Councillor B Livesley (Chairman)  
Councillor H Davenport  
Councillor S Davies  
Councillor S Hogben  
Councillor D Stockton – Non voting Member, due to being a Cabinet

Support Member.

**3.2.0 Scope of services**

- 3.2.1 Planning Enforcement action can only be taken when works have been undertaken or a use commenced without the appropriate permission or consent. These may include; Building Works, including extensions and some external alterations, External and internal works to listed buildings, Substantial demolition of buildings in Conservation areas, some changes of use of property or land, Certain advertisements/signage and works that differ from approved planning drawings or non-compliance with conditions on permissions or consents.
- 3.2.2 Additionally the following operations are also considered to form part of the planning enforcement process; Section 106 agreements, Minerals and Waste, High Hedges, Unauthorised works to tree preservation orders, trees in conservation areas, and Demolition in conservation areas, although due to the general nature of the section 106 process, it is considered to sit outside the remit of this review.
- 3.2.3 When development appears to have taken place without planning permission or without complying with conditions attached to planning permission or works appear to have been carried out to a listed building without consent, in these and other similar cases, the Council will treat them as a breach of legislation
- 3.2.4 For each operation specific principles need to be applied when considering the appropriate enforcement action. Section 3.3 below identifies these principles and highlights actions available.

### **3.3 Enforcement Principles**

- 3.3.1 Under the legislative requirements the Council has a statutory duty to investigate complaints received relating to development that may have been carried out without permission or consent. This may include building works, some engineering operations and where a change of use of land has been proposed, and in the vast majority of cases planning permission is required before those activities are undertaken, although some minor works do not, as defined by the general development order.
- 3.3.2 Where a report of a breach of planning control has been received the council currently investigates all matters according to the agreed protocol.
- 3.3.3 It should be noted that whilst it is a statutory requirement to investigate matters, it is the decision for the council to affect any enforcement actions against an individual or group of individuals.
- 3.3.4 Planning enforcement is not straight forward and legal processes can sometimes be lengthy and complicated therefore an 'instant response' or resolution will not be easy. When dealing with breaches there is a need to strike a balance between protecting the environment, protecting the amenities of neighbours and conserving historic building and areas, whilst at the same time enabling the freedom of the owners to use or alter their property as they wish, even though it may initially have been without the necessary permission;
- 3.3.5 The main breaches of planning control include:
- Building, or engineering work and the change of use of land without a planning permission
  - Unauthorised work to trees protected by a tree preservation order or in a conservation area
  - Breach of conditions attached to planning permissions or the terms of a Section 106 obligation
  - Non-compliance with approved plans attached to planning permissions
  - Unauthorised advertisements or signs
  - Unauthorised change of use of land/buildings. Land or buildings in such poor condition that it adversely affects the amenity of the area. Unauthorised works to a listed building
  - Unauthorised demolition work in a conservation area
  - Unauthorised deposit of waste or mineral extraction
- 3.3.6 Situations that do not involve a breach of planning control such as land ownership disputes and breaches of a covenant attached to deeds remain as civil issues and are not a concern of the enforcement team
- 3.3.7 Planning enforcement issues are sometimes capable of resolution in a proactive manner without the need for formal enforcement action or prosecution. However, if negotiation fails to resolve the problem, the enforcement team has a number of tools it can use to obtain information or remedy the breach which can include:

**Planning Contravention Notices (PCN)** - This notice seeks information about a suspected breach of planning control.

**Enforcement Notices** - This notice can be issued against breaches of planning control and sets out steps that the recipient should take to remedy the breach including a timetable for doing so.

**Breach of Condition Notices (BCN)** - These notices can be served where a condition attached to a planning permission is being breached. A BCN will set out the steps the recipient should take to remedy the breach of condition together with a timetable for doing so.

**Section 215 Notices** - These notices can require a landowner to tidy up land which the Council considers harms the amenity of the area. The notice again will set out steps that the owner has to take and a timetable.

**Listed Building Enforcement Notice** - This notice is similar to an Enforcement Notice but used where works have been carried out to a listed building without the benefit of listed building consent or in contravention of a condition of such a consent.

**Stop Notice** – This Notice is only served in conjunction with an Enforcement Notice in exceptional circumstances where it is essential that activities cease to safeguard amenity or public safety or to prevent serious or irreversible harm to the environment.

**Temporary Stop Notice** - Similar to the above, this notice can be served in exceptional circumstances where it is essential that activities immediately cease, for a period of up to 28 days this period allows the Council to make further investigations and considers whether to take further action.

**Prosecution** - Prosecutions are normally brought in the Magistrates Court against the failure to comply with one of the notices listed above along with the unauthorised display of advertisements, unauthorised works to a protected tree or unauthorised works to a listed building but some serious cases may be brought in, or referred to the Crown Court. Failure to respond or comply with the requirements of the notices above will result in prosecutions being brought.

**Injunction** - An injunction is only sought, in the County or High Court, in the most exceptional investigations and used as a last resort if the Council considers it necessary to restrain an actual or anticipated breach of planning control. The contravention of an injunction is contempt of Court and the Court can levy an unlimited fine or impose a custodial sentence.

**Appeals** - An appeal may be lodged with the Planning Inspectorate against an enforcement notice before it comes into effect on one of seven specified grounds. If an appeal is made the requirements of the notice are suspended until the appeal is heard. Appeals against enforcement notices may sometimes take up to a year to be heard.

If an appeal is allowed, no further action can be taken by the Council in regard to that breach. If an appeal is dismissed, legal action can only



be taken if an individual then fails to comply with the requirements of an enforcement notice.

- 3.3.8 There are time limits for taking enforcement action: four years after substantial completion in relation to the erection of buildings and change of use of buildings to residential use; and ten years for most changes of use of land or buildings and breach of condition
- 3.3.9 When assessing the need for enforcement action the Authority should bear in mind that **it is not an offence** to carry out development without first obtaining planning permission required for it. Section 73a of the 1990 act specifically provides that a grant of planning permission may relate to development carried out before the date of the applications
- 3.3.10 To ensure any necessary considerations are effective a number of principles can be applied to determine the course of action

Principle 1 - In the carrying out of its planning enforcement functions, in the organisation of its planning enforcement service, and in deciding whether to take enforcement action in any particular case of unauthorised development, the Council should consider the current advice issued by the Government, in particular, in 'National Planning Practice Guidance – Enforcement of Planning Control', and the advice contained in the DETR Good Practice Guide (1997).

*“An efficiently organised and effective enforcement service upholds the integrity of the planning system as a whole and gives confidence to the public that the Council is using its planning enforcement resources to best advantage in the protection of the environment.”*

Principle 2 - When considering whether to take enforcement action, the decisive issue for the Council will be whether the breach of control would **unacceptably affect public amenity or the existing use of land** or buildings or be contrary to Council planning policy, **meriting protection in the public interest**.

Principle 3 - Any enforcement action **should** therefore **always be commensurate** with the breach of planning control to which it relates, and it is usually inappropriate to take formal enforcement action against a technical breach of control which causes no harm to amenity in the locality of the site.

Principle 4 - When making a decision, consideration should be made as to whether it is appropriate, in the public interest, for the authority to initiate formal enforcement action, to remedy or stop an alleged breach of planning control, which will require thorough assessment of each individual case with the final decision being based only on planning grounds.

Principle 5 - Each individual case of unauthorised development should be carefully assessed on its own merits. Any assessment should

indicate how the development relates to the property in question and its particular local environment, and any relevant Development Plan policies.

Principle 6 - Where unacceptable unauthorised development is identified, the Council should do all the law allows which brings it to a stop.

Principle 7 - It should be clear that it is **generally unreasonable** for a Council **to issue an Enforcement Notice solely to remedy the absence of a valid planning permission**. If it is concluded on appeal that there is no significant planning objection to the breach of control "Councils who take enforcement action in these circumstances are at risk of an award of costs against them" (NPPG). Government advice states that **the Enforcement system should not be used to "punish"** anyone for not having obtained planning permission first.

Principle 8 - The Council recognises its responsibility to take enforcement action where appropriate, and that the Government Commissioner for Local Administration (the 'Ombudsman') has said that there is 'maladministration' if a Council fails to take effective enforcement action which was plainly necessary

### 3.4 Legislative framework

- 3.4.1 The planning enforcement function operates within the remit of specific legislative constraints which can be varied and complex. The main legislation governing the enforcement of planning control lies within the Town and Country Planning Act 1990. Under this Act the Council has powers:
- to enter land to make necessary inspections
  - to require owners and occupiers to provide information about the ownership and use of land and buildings
  - to serve enforcement and other notices on landowners and persons responsible to require breaches of planning control to stop or be improved or both
- 3.4.2 The robustness of the planning process depends upon the commitment to take effective action against unauthorised development which is not in the public interest and the instigation of enforcement action, where necessary, is seen as essential to this process.
- 3.4.3 Relevant legislation includes the following;
- National Planning Policy Framework and Planning Act 2008 – Act Chapter 29 2008
  - Localism Act 2011 – Act Chapter 20 2009
  - Local Democracy, Economic Development and Construction Act 2009 – Act Chapter 20 2009
  - Housing Act 2004 – Act Chapter 34 2004
  - Planning and Compulsory Purchase Act 2004 – Act Chapter 5 2004
  - Countryside and Rights of Way Act 2000 – Act Chapter 37 2000
  - Pollution Prevention and Control Act 1999 – Act Chapter 24 1999
  - Human Rights Act 1998 0- Act Chapter 42 1998
  - Housing Act 1996 – Act Chapter 52 1996
  - Environment Act 1995 – Act Chapter 25 1995
  - Planning and compensation Act 1991 – Act Chapter 34 1991
  - Town and Country Planning Act 1990 – Act Chapter 8 1990
  - Planning (Listed Buildings and Conservations Areas) Act 1990 – Act Chapter 9 1990
  - Environmental Protection Act 1990 – Act Chapter 43 1990
  - Caravan Sites and Control of Development Act 1960 – Act Chapter 62 1960 and Statutory Instruments issued from 2006

3.4.4 Within this statute there are specific requirements relating to the nature and availability of information that should be made readily available. Section 118 of the Town & Country Planning Act places a statutory duty to provide for examination by members of the public a register of enforcement notices issued relating to land within the area. The register should include the following,

- the address of the land to which the notice relates or a plan by reference to which its situation can be ascertained;
- the name of the issuing authority;
- the date of issue of the notice;
- the date of service of copies of the notice;
- a statement or summary of the breach of planning control alleged and the requirements of the notice, including the period within which any required steps are to be taken;
- the date specified in the notice as the date on which it is to take effect;
- information on any postponement of the date specified as the date on which the notice will take effect by reason of section 175(4) of the 1990 Act (appeals: supplementary provisions)(**63**) and the date of the final determination or withdrawal of any appeal;
- the date of service and, if applicable, of withdrawal of any stop notice referring to the enforcement notice, together with a statement or summary of the activity prohibited by any such stop notice; and
- the date, if any, on which the local planning authority are satisfied that steps required by the notice for a purpose mentioned in section 173(4)(b) of the 1990 Act (contents and effect of notice: remedying any injury to amenity)(**64**) have been taken

3.4.5 The register shall also contain the following information with respect to every breach of condition notice served in relation to land in the area of the authority maintaining the register—

- the address of the land to which the notice relates or a plan by reference to which its situation can be ascertained;
- the name of the serving authority;
- the date of service of the notice;
- details of the relevant planning permission sufficient to enable it to be identified; and

- a statement or summary of the condition which has not been complied with and the requirements of the notice, including the period allowed for compliance

3.4.6 All entries relating to an enforcement notice, stop notice or breach of condition notice shall be removed from the register if—

- in the case of an enforcement notice or stop notice, the relevant enforcement notice is quashed by the Secretary of State;
- in the case of a breach of condition notice, the notice is quashed by a court;
- in any case, the relevant notice is withdrawn

3.4.7 All registers shall also include an index for enabling a person to trace any entry in the register by reference to the address of the land to which the notice relates.

3.4.8 All registers kept shall be available for inspection by the public at all reasonable hours and any information required by the Act to be included within the register should be included within 14 days of the action.

3.4.9 The facility of an on-line register is currently unavailable through the council's website.

### 3.5 Current Performance Standards

- 3.5.1 Currently operations within the team are dictated by the current enforcement protocol drafted in 2009. This protocol refers to a breach of planning control as the carrying out of development without the grant of planning permission from the council, or deemed permission by Government order and will also include the carrying out of development without compliance with the approved plans or any conditions attached to a planning permission. The protocol also makes reference to unauthorised work to Tree Preservation Orders, trees within conservation areas and unauthorised adverts, all of which constitute a criminal offence. Hedgerows and high hedges are also referred to separately.
- 3.5.2 A separate paragraph relating to Minerals and Waste Enforcement has been included referring to unauthorised operations together with compliance monitoring of such sites.
- 3.5.3 The protocol sets out a number of priorities according to these cases;
- Priority 1 – Works to listed building (demolition/alteration/disrepair), Demolition in a conservation area, Works to trees covered by TPO's or in a conservation area and Development causing immediate/irreparable harm to protected ecology or causing serious danger to the public
- Priority 2 – Operational development already on progress, development where potentially immune from enforcement within 6 months, development causing serious harm to amenity and breaches of condition/non-compliance with approved plans causing serious harm
- Priority 3 – Other operational development which is complete, Changes of use resulting in some harm to amenity, Advertisements, Breaches of condition/non compliance with approved plans causing non-serious harm to amenity
- Priority 4 – Change of use resulting in no harm to amenity, untidy land
- 3.5.4 Performance against these priorities focuses on the period of time from initial receipt of a complaint and the time where a site inspection is made. The criteria are set as follows;
- Priority 1 – within 1 working day  
 Priority 2 – within 10 working days  
 Priority 3 – within 20 working days  
 Priority 4 – within 65 working days
- 3.5.5 Additionally the protocol sets out a target response for the Council to acknowledge the receipt of the complaint.

- 3.5.6 The protocol states that acknowledgement of the reported breach shall be issued within 3 working days.
- 3.5.7 It has been considered that the time targets set against the activity associated with priority 4 are too long, leaving the complainant without any feedback for a significant period of time, therefore in consideration to the numbers received within this category this should be removed.

### 3.6 Performance achievements

3.6.1 In order to determine the current level of performance against the criteria set within the Enforcement protocol data held, the enforcement database system has been reviewed. Any information within this section relates to that data alone and it should be noted that current working practices do not require all cases to be recorded. The relevant period of data selected being the 15<sup>th</sup> October 2011 to the 14<sup>th</sup> October 2012, covering a complete calendar year. This has allowed for any deviation of data due to more recent cases still remaining within the permitted timescales. Work is currently in progress in order to ensure all back dated records will be entered into the system for future reference.

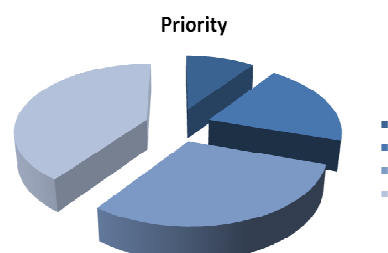
3.6.2 Within the period referred to in paragraph 3.6.1 a total of 912 cases were logged within the system and at the time of data analysis (31<sup>st</sup> March 2013) records indicated a total of 547 of those cases had been “closed” with 365 remaining “open”. Records indicate the following reasons for closure were;

Reason for Closure	Number of cases applicable
Action not expedient	37
Appeal allowed	1
Complied with Voluntarily	109
Immune from Action	2
No Breach	319
Not Development	4
Permission Granted	70
Special Circumstances	5
Total	547

3.6.3 The protocol provides performance standards relating to acknowledgement of case and response times for inspection depending on the nature of the case with the nature of the case being recorded and classified as a specific priority.

3.6.4 Numbers against Priority of the cases logged the following were allocated per priority as follows;

Priority 1 – 22  
 Priority 2 – 265  
 Priority 3 – 594  
 Priority 4 – 31



Of these cases the following table indicates the numbers of cases that remain open and the number that have been closed;



Priority	Total	Closed	Remain open
1	22	12	10
2	265	183	82
3	594	338	256
4	31	14	17
Totals	912	547	365

Further analysis of those priorities identifies the number of cases closed against the priority set:

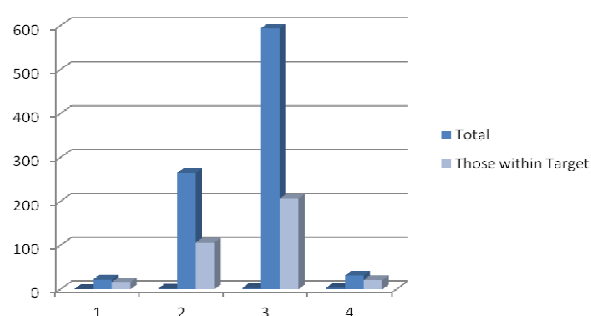
Reason for Closure	Number of cases applicable			
	Priority 1	Priority 2	Priority 3	Priority 4
Action not expedient	0	9	26	2
Appeal allowed	0	0	1	0
Complied with Voluntarily	0	34	73	2
Immune from Action	0	0	2	0
No Breach	10	105	196	8
Not Development	0	1	3	0
Permission Granted	2	34	33	1
Special Circumstances	0	0	4	1
Total	12	183	338	14

These figures clearly show that a total of 35% of cases responded to in the first instance were not breaches of planning control.

3.6.5 Performance against the acknowledgement of complaints taken from the system is as follow; Of 912 cases logged 878 (96%) were issued with an acknowledgement

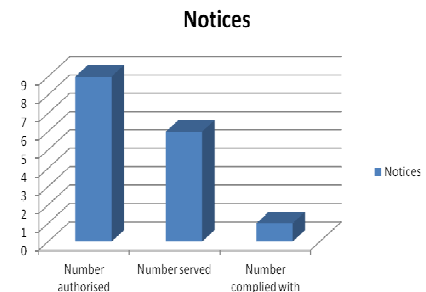
3.6.6 Of those acknowledged a total of 831 (91% of total cases) were issued within the 3 day target figure. Of those cases within each priority the performance against the site visit target was as follows;

Priority	Total	Within Target	Percentage within target
1	22	16	72%
2	265	106	40%
3	594	206	35%
4	31	21	68%



3.6.7 The number of formal notices issued has been recorded within the corporate Corvu management reporting system however these are combined with the number of notices issued relating to housing and drainage matters.

3.6.8 For the same period the data within the system suggests that a total of 9 notices received authorisation with only 6 being served and 1 being complied with. *This does not include those notices not included within the database system.*



3.6.9 National Benchmark figures suggest a figure of 150 “live” cases per enforcement officer per year as a figure commonly used to determine the necessary resources within a team, although this relates simply to reactive cases and does not include for any compliance monitoring. This does not consider multiple complaints received for individual cases and at this time this information is unavailable.

3.6.10 Comparison of this data with the structure highlighted within the resources section of this document would suggest 912 cases for 7.92 FTE’s on the establishment within Planning Enforcement alone. These figures represent a total of 115 cases per officer. This does not include any provision allowed for risk of absence against service delivery and therefore this should be factored in to determine the true nature of cases per FTE.

3.6.11 The above cases represent the number of reactive cases and do not include positive enforcement workload or the number of complaints responded to per case. National legislation does not provide for the opportunity to charge for any statutory responses to reported cases at this present time.

3.6.12 Other works; During this period one of the senior enforcement officers also dealt with 3 planning applications as case officer.

Cases recorded within the database system within the last 3 years can be seen in the table below. Currently a number of waste and minerals cases are not held within the system. Physical analysis has suggested these present an additional workload of approximately 29 cases per annum.

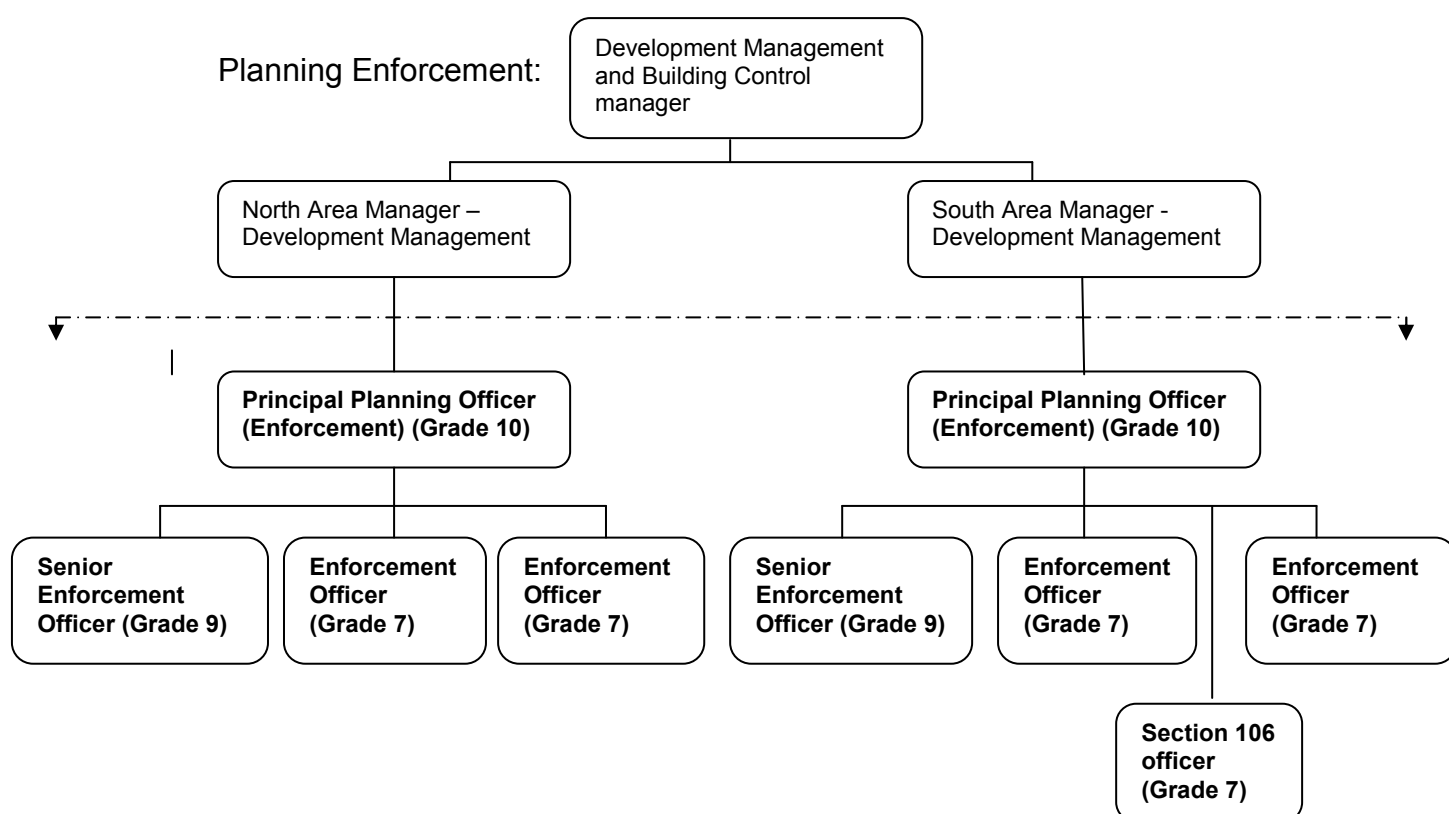
Enforcement Category	Numbers received between 01 <sup>st</sup> April 2009 and 31 <sup>st</sup> March 2010	Numbers received between 01 <sup>st</sup> April 2010 and 31 <sup>st</sup> March 2011	Numbers received between 01 <sup>st</sup> April 2011 and 31 <sup>st</sup> March 2012	Numbers received between 01 <sup>st</sup> April 2012 and 31 <sup>st</sup> March 2013
Untidy land	13	11	18	20
Advert Control	41	78	46	52
Conservation Trees/Demolition	4	2	1	3
Listed Buildings	5	19	14	16
Planning breach	537	823	659	784
Tree preservation Order	1	0	0	8
Minerals & Waste	8	5	3	7
Null description	218	6	0	
High Hedges	0	4	4	5
Total	827	948	745	895

- 3.6.13 To determine resource based on 52.14 weeks per year provides for 260.71 working days per individual minus 8 bank holidays and 30 days annual leave, assuming full entitlement. Therefore a total 222 productive days are initially considered available per individual.
- 3.6.14 Based on an average over the last 3 years of 863 cases per annum logged within the system this would allow for approx 15.23 hours available per complaint. This assumption does not factor in “other duties” as required from officers at any time, such as corporate activity, training and development etc.
- 3.6.15 It is clear that not all enforcement cases have been included within the database system. This can be highlighted by the low numbers of Tree Preservation Order and Waste & Minerals complaints.

### 3.7 Resources available

3.7.1 Currently the resources available to the enforcement team vary according to the team and location which is highlighted in the structure chart below, with the north team based in Macclesfield and the south team based in Crewe.

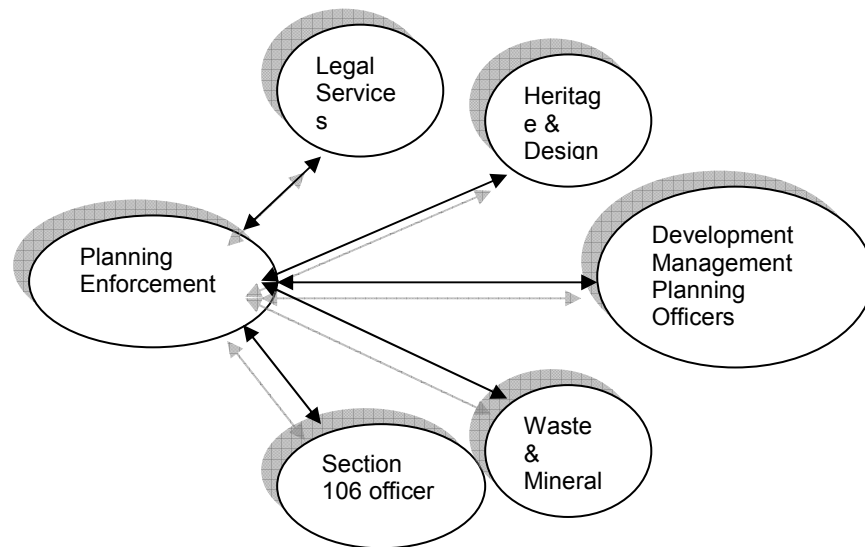
3.7.2 This structure does not represent the overall picture of resources relating to the scope of service functions as described within 3.2 and excludes those members of staff from within other development management teams who contribute to the enforcement process. This includes some members of the heritage and design team, together with waste & minerals.



3.7.3 Activities around High hedge and TPO complaints etc, are carried out by different teams, depending on the locality of the team, with the planning enforcement officers taking responsibility for some in one area, and the heritage and design officers taking the lead in the other.

3.7.4 Changes to working practices have resulted in the section 106 officer currently reporting to the South Area Manager – Development Management and whilst not indicated within the table above, the post of Enforcement Officer (Waste) also forms part of the enforcement budget team.

- 3.7.5 Working practices have removed the “Enforcement Officer (Waste)” from the enforcement team, reporting now to the “Principal Planning officer (Waste)”.
- 3.7.6 This has created a small team of two officers dealing with the Waste and minerals functions and therefore does not provide economies of scale should these enforcement operations fall part of a larger team.
- 3.7.7 To enable satisfactory decision making, members of the team require professional advice from other professional disciplines highlighted below, with the enforcement team acting as the hub of activity



### 3.8 Financial Position

3.8.1 The current Planning Enforcement staffing budget is as follows

Account		Cost Centre	Description	Costs
2223000	Enforcement	10	Direct Employees	£331,543.00
2223000	Enforcement	24010	Bdgt Public Transport	£38.00
2223000	Enforcement	25010	Bdgt Vehicle Allowances	£4,000.00
2223000	Enforcement	33010	Bdgt Clothng/Uforms/Lndry	£500.00
2223000	Enforcement	35010	Bdgt Services	£21,000.00
2223000	Enforcement	36400	Bdgt Phones	£3,124.00
2223000	Enforcement	37100	Bdgt Subsist + Conf Exps	£300.00
			Total	£360,505.00

3.8.2 Responsibility for budget management lies with the Development Control and Building Control Manager

3.8.3 The table above represents those employees who are directly considered as part of the enforcement team however members of other teams currently undertake significant enforcement operations as part of their day to day tasks.

### 3.9 Relationships

3.9.1 The internal relationships of team members can initially be determined by comparison of the staffing structure together with the appropriate job descriptions. These should reflect the nature of the role together with the appropriate case type.

3.9.2 The functions of those employees who represent the Enforcement Team are linked by generic roles as described within current job descriptions with certain additions that relate to seniority within the team. Such generic roles include;

- The monitoring of development to ensure that it is carried out in accordance with planning permissions granted and in accordance with the specific requirements of the planning conditions imposed and/or in accordance with the requirements of legal agreements secured by the local planning authority relating to planning proposals for the use or development of land.
- Investigate and record complaints concerning the alleged unauthorised use or development of land, and to collect evidence in respect of alleged breaches of planning control, and where appropriate serve notices on landowners, including site visits and preparation of reports/notices with recommendations on enforcement matters.
- Report to and/or attend any meetings as requested.
- Prepare Written Representation statements, Hearing Statements and proofs of Evidence in respect of enforcement related appeals and to appear as expert planning witness at informal hearings and public inquiries and in Court proceedings as necessary and to attend appeal site inspections as required
- Assisting the Principal Planning Officer (Enforcement) or Area Manager in the management of the Service, liaison with Council Members and attendance at Planning Committee and Committee site visits when necessary

3.9.3 In addition to the above the role of Principal and Senior Officer also includes:

- To carry out site visits and prepare reports/notices with recommendations on enforcement related matters **and planning applications as appropriate.**
- To take responsible for dealing with the most complex of the planning enforcement matters to be dealt with in the Development Management Service

- Provide pre-application information and appropriate planning advice, to developers and their agents, landowners, other Divisions of the Council, Parish and Town Councils, Amenity Societies, members of the public, statutory undertakers and other external concerns and agencies requesting assistance from the local planning authority
- Also deputise for senior members of staff when required, including the organisation of staff within the section, maintaining quality management systems, promoting customer care and monitoring performance against the business plan

3.9.4 The role of principal Planning officer also includes the authorisation of development/notices under delegated powers.

3.9.5 *Relationship with Legal Services;*

3.9.6 When issuing enforcement notices referral to the legal service for advice remains a key process in order to adequately assess the risks associated with the serving of such notices, however whether this approach should apply to all notices is unclear.

3.9.7 Relationships between the two professions need to be robust. All those parties need to have a principle understanding around their/others inclusion within the process, and what is expected in this process. Cases where considerations were appropriately made can sometimes create a perception that the legal services remain reluctant to support any action.

3.9.8 Relationships between the two teams or at least the impression of relationships differ significantly, however comments received from the legal service team highlighted their views of a suitable relationship and there is an indication that relationships have improved over recent months and this is still being developed. Meetings are arranged as and when required, however the time period to the issue of advice being given is not always to the satisfaction of the enforcement team. It is evident that predominantly one particular member of the legal team now conducts the main body of legal service work for the planning enforcement team,

3.9.9 The legal team consider that communication is good and feel that, in an ideal world, the team should be consulted prior to all enforcement notices being issued, however do realise that in reality this may not be achievable.

3.9.10 Comments from the legal service team do not appear to encourage the use of service level agreements stating that it is the working relationship that is important rather than what should be achieved, although the team would welcome shared information.



3.9.11 *Relationships with Heritage and Design*

3.9.12 Currently responsibility for certain enforcement cases has been delegated to the Heritage & Design Manager, these powers relate to the protection of hedgerows, the preservation of trees and complaints relating to High Hedges. Authorisation relating to conservation rests with the Development Management and Building Control Manager.

3.9.13 Due to the nature of these complaints the process around the organisation has become unfamiliar with some and inconsistent depending which team is involved. Involvement within cases needs to be clear and at present this is depends whether the team is based in the north or south.

3.9.14 Each particular profession relies heavily on the other and it is clear that operations cannot continue without these close relationships remaining, however the actual project management of the case or responsibility of the case should be placed within one particular team.

3.9.15 When dealing with possible enforcement cases relating to trees which are protected by preservation orders, in the north team the work is managed by the forestry officers, however within the Crewe office the case is managed by the enforcement team with support from the forestry professionals.

3.9.16 Conservation officers rely on the experience and expertise of the enforcement team when dealing with collecting and gathering evidence in accordance with PACE requirements.

3.9.17 Additionally not all cases received by these teams relating to TPO's and Hedgerows etc are entered into the system, with the common practice being to record only those where some form of action is required. This does not allow consideration to the amount of working operations where no action is required to be reported and therefore capacity management will be affected.

3.9.18 It should be noted that when dealing with High Hedge complaints the Heritage & Design team do not generally involve the legal service team prior to issuing a notice, and for matters where they require such liaison they do so through the enforcement team.

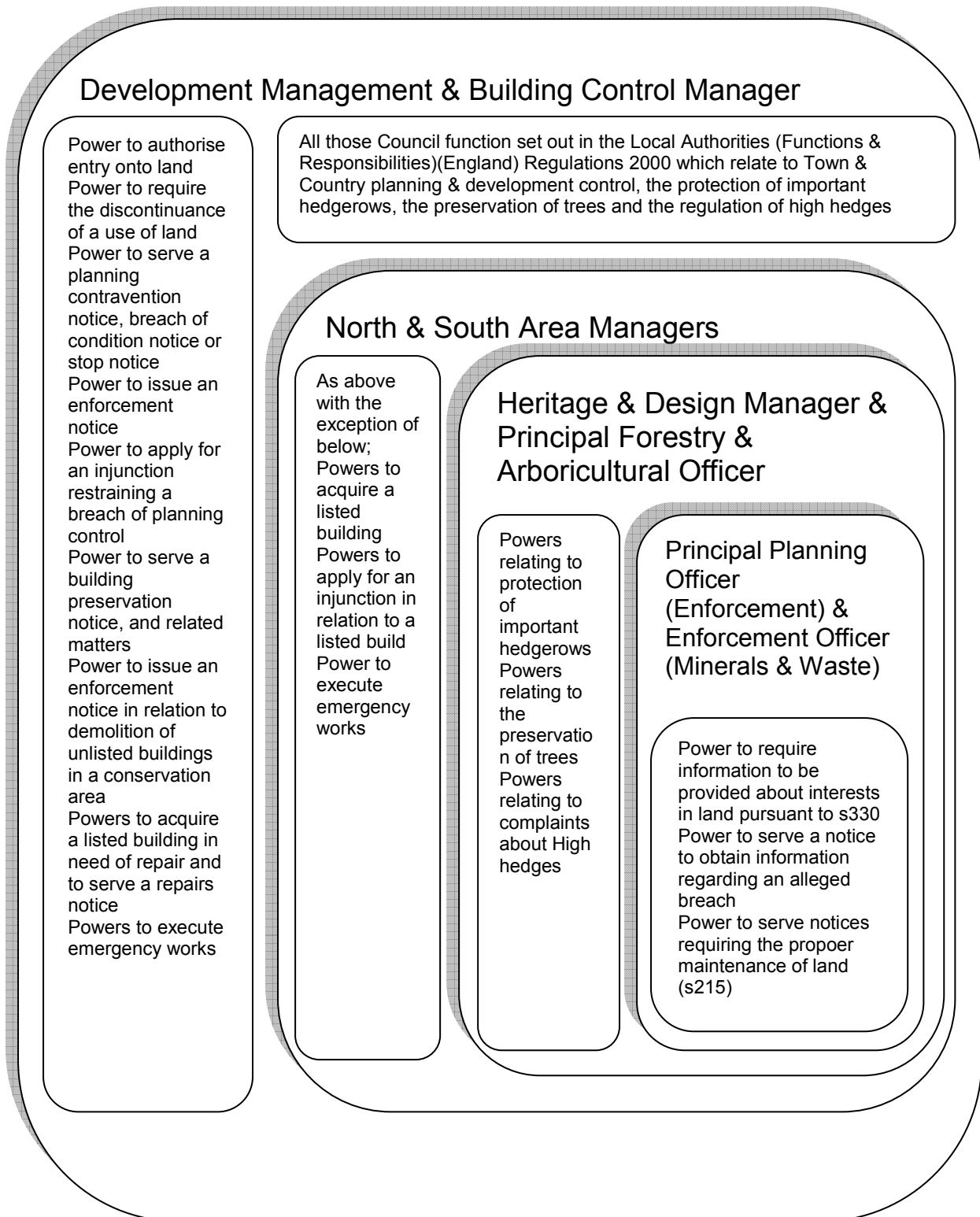
3.9.19 *Relationships with Minerals and Waste*

3.9.20 The role of the minerals and waste enforcement officer has generally developed into an internal partnership operation, operating under the direction of the Principal Planning Officer (Waste), and it is clear that the two roles can provide significant support to one another.

- 3.9.21 The role of minerals and waste enforcement whilst being specifically skilled in a particular discipline, the principals of the role compare with those of the planning enforcement team. The role includes;
- Responding to complaints of unauthorised activity/breaches of conditions
  - Rectifying the unauthorised activity/breaches in the most expedient way
  - Liaising/working with external authorities to minimise the impact of unauthorised/breach of conditions on the environment
  - The monitoring of authorised sites, providing a proactive approach to controlling activities on permitted sites.
  - Providing support and experienced based knowledge to other members of the minerals and waste team
- 3.9.22 It is apparent that the nature of this role compares with those of the generic planning enforcement officer
- 3.9.23 The current arrangement presents operational risks due to the limited resource.
- 3.9.24 *Section 106 considerations*
- 3.9.25 Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally binding agreement or planning obligation with a land developer over a related issue. The obligation is commonly referred to as a “Section 106 agreement”.
- 3.9.26 The Government has viewed S106 as providing only partial and variable response to capturing contributions for infrastructure and as such provision for the Community infrastructure Levy is now in place in the 2008 Planning Act. Council will be empowered (but not required) to set a charge for most developments, done through a formula related to the scale and type of the proposal.
- 3.9.27 The recovery of S106 monies does not fall within the remit of the enforcement principles as set highlighted within paragraph 3.3.

### 3.10 Delegated Powers and Decision Making Process

3.10.1 The final decision whether or not to issue an appropriate enforcement notice rests with the North & South Team Managers within the Development Management Service. Delegations as set out within the Councils scheme of delegation are as follows;



- 3.10.2 There are currently no processes in place which provide opportunity for elected members to formally comment on the decisions made.
- 3.10.3 The ability of scrutiny by members of decisions should be included within any developed/revised policy.

### 3.11 Communications

- 3.11.1 Breaches of planning control can be reported to the Council either by telephone, letter or e-mail. Acknowledgement of reports should be issued and can be through letter, e-mail or telephone and will provide the name and contact details of the investigating officer.
- 3.11.2 Telephone: Initial reports can be made through a corporate number published on the council's website. This number being a generic number for all services: 0300 123 5014. On calling this number the complainant is offered a number of different options to select:

Option 1 – Building Control

Option 2 – EIR enquiries

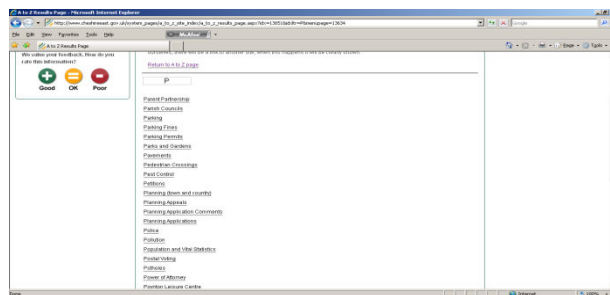
Option 3 – Land Charges

Option 4 – Planning Enforcement/Tree preservation/listed buildings and any other planning enquiries.

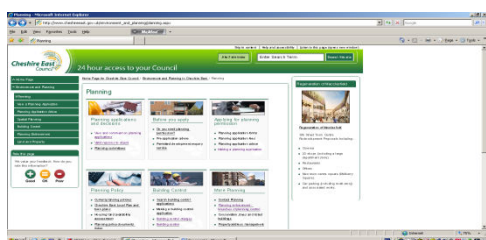
Common practice has been identified which indicates that the correct selection is not always made.

#### 3.11.3 Website navigation and Information

- 3.11.4 When accessing the corporate website users rely on the A – Z site index to search for service information. In order to find information relating to Planning Enforcement the search initially present a difficulty in that there are 4 options presented on the list that refer to Planning, with only one of these making reference to Planning Enforcement. This can be seen below;



- 3.11.5 When visiting these selected pages the user still has difficulty to find reference to Planning Enforcement information, however the menu tree to the left of the page does provide the link to the comprehensive home page for the planning service.



- 3.11.6 The planning enforcement webpage contains references to reporting a suspected breach, a link to the planning portal, search for planning applications and the Enforcement protocol. The

page provides a contact telephone number through the corporate service centre.

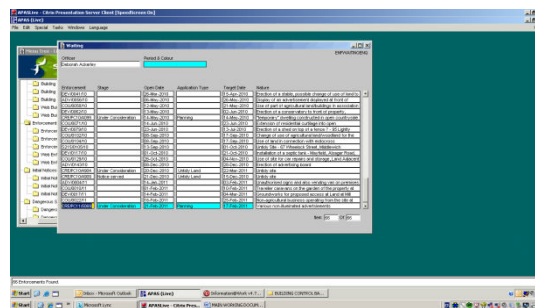
- 3.11.7 The link to the planning portal provides information relating to planning applications however this is extremely comprehensive and may not provide information at the right level to the right person.
- 3.11.8 Reference is made to the availability of a register of all enforcement notices, stop notices and breach of conditions notices, although this is not available on the website and can only be viewed in paper format. Therefore there are two registers, one for Macclesfield and one for Crewe.
- 3.11.9 The website does not also include reference to what the complainant should expect as to the level of service delivery. There appears to be no guidance as to what communication or service interaction will be provided which will most likely result in unnecessary chase up calls being made to the service.
- 3.11.10 Neighbours and those immediately affected. The service does not provide information to neighbours of sites where reports are being investigated. Information is simply communicated to the complainant and the owner of the site.

### 3.12 Technology

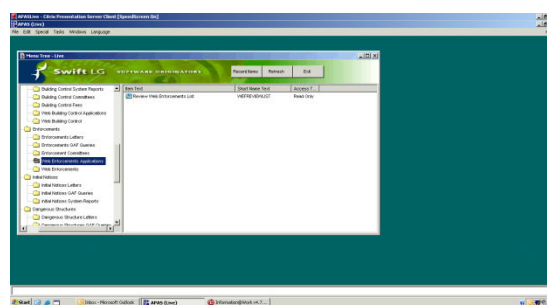
3.12.1 Currently the potential provided through planning delivery systems can be further developed for the planning enforcement functions, removing alternative working practices and adopting a common approach.

3.12.2 Not all working operations are maintained within the system which can impede performance and capacity management. Additionally simple functionality of systems when used correctly will also improve service delivery and enhance customer satisfaction.

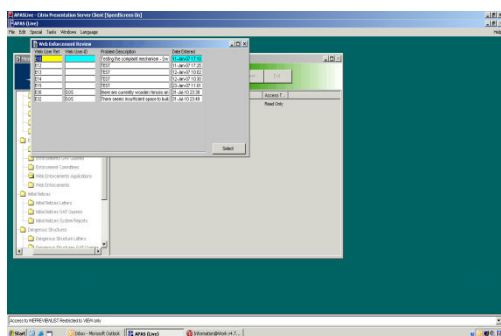
3.12.3 For example, the system contains a simple “waiting report” which highlights those complaints/reports which remain pending. These reports present simple data however can give a quick overview of case load pending. However, due to current working practices a number of cases have been left “open” and still form part of the report when technically works have come to a halt.



3.12.4 Examination of the back office system has found that the system supports a web based submission functionality that will allow the automatic inclusion of complaints entered onto the website directly into the back office database system. In order to make full use of this function the website forms will need to be considered with a link to the back office system. This form should also include the facility to upload any data which a complainant may feel pertinent to the complaint, such as a photograph.



3.12.5 Once complaints have been entered and received by the back office system, the report will be held within a reviewing area, requiring technical support to verify the address to which the complaint has been logged. This address would link directly to the gazetteer systems used by the service



## **4.0 Conclusions**

- 4.1 When considering the appropriate action to be taken following a report/complaint, consideration should always be made to the way in which that decision is communicated to the public. This process should be robust and set within appropriate time limits that seem acceptable by the “reasonable” person.
- 4.2 The decision making process should follow strict guidelines which would be set out within an effective enforcement management model and this model should clearly identify those responsible for the decision making itself.
- 4.3 It has been recognised that a number of complex relationships exist between a variety of professional officers when determining whether it is expedient to take enforcement action or not and therefore any expectations relating to the process should allow for such discussion and consultation.
- 4.4 It is considered that an efficiently organised and effective enforcement service upholds the integrity of the planning system and as a whole gives confidence to the public that the Council is using its planning enforcement resources to the best advantage in the protection of the environment.
- 4.5 Additionally the Council needs to ensure that any enforcement action taken is always commensurate with the nature of the breach of control to which it relates. Therefore delegated authority should reflect this and through the inclusion of concise priorities within the policy such delegation can be effectively implemented.
- 4.6 Due to the nature of the close working relationships and current delegations it would be expedient to delegate authority to determine minor breaches to officers, whilst the high priority cases should be discussed within the Service Management Team weekly team meeting process, with authority take any appropriate action being granted by the responsible Manager and in his/her absence those who would normally support the process.
- 4.7 This process would allow discussion to take place, based on the report issued by the appropriate officer, and the appropriate discussions and decisions can be made available to elected members on a regular basis.
- 4.8 This process would allow for the day to day management of the enforcement team to be carried out by any one of the managers within the service area.
- 4.9 Reports of actions and decisions should be included within quarterly meetings presented to strategic planning committee.

- 4.10 Comparison to other authorities has found that the nature of the response to a complaint together with the target time for that response can be varied depending on the expectations of the organisation.
- 4.11 In order to determine the timescales for appropriate actions it is clear that the identification of a particular action reached should be clear and concise. The target point should be deemed as the first phase of investigation that is completed and at that point a form of notification issued to the complainant and also to anyone that has shown interest throughout the initial stages.
- 4.12 This stage would be reached when;
- Case is closed because the investigation identifies that no breach in planning has occurred
  - Case is closed because on alleged breach of planning has been identified but then resolved by negotiation.
  - A planning application or other form of application has been submitted following the investigation
  - A breach in planning control has been identified and an application requested, but not submitted. An assessment has been made determining that it is not expedient to take formal enforcement action in this case at this time.
  - A breach in planning has been identified. An assessment has been made determining that it is expedient to take formal enforcement action in this case. Formal action may be in the form of notices issued or prosecution statements sent
- 4.13 It is clear that when depositing a planning application people expect a decision within 8 weeks of the application being registered, and therefore it should not be unreasonable to offer the same expectation when dealing with a complaint relating to a planning enforcement matter.
- 4.14 To achieve this target, service operations need to be clear and concise and efficient, therefore actions need to be taken to remove the burden on professional officers relating to unnecessary distractions throughout the process. These should include;
- When a planning application is received, on registration, a check should be made for any enforcement cases relating to that particular site and anyone with direct interest should be notified.



- The service should develop the use of media ensuring that the general public are aware of the enforcement service and the good work it is doing on their behalf

4.15 It is clear that the release of any information is determined by the nature and scale of the probable breach and this should be managed within the team.

4.16 Tackling key issues of performance management, public relations and working practices will build a proactive enforcement service that is considered a key component in an effective planning function.

Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.001	A revised planning enforcement policy should be implemented and agreed.	PER.001.a	Include a formal progress reporting process directly to Council.	To assist in the decision making process, establishing priorities, making service commitments as well as acting as a key document in the development of an effective enforcement management model. To provide the opportunity to refer for scrutiny the decision making process.	B7(i) and B7(ii)
		PER.001.b	Development of new priorities, condensing the current list to 3 categories. Low, medium and High. Where complaints involve operational development that has already progressed this would need to be reclassified as a high priority in the first instance. Where several complaints or elected members have been contacted this should result in the breach being moved up in the priority list.	Currently the majority of complaints focus on only two of the 4 priorities, with priority 4 response being limited. Condensing into 3 will provide a more focussed approach to prioritisation.	
		PER.001.c	The development of an enforcement management model, including a clear decision making process.	To provide a logical system that assists officers to make enforcement decisions in line with the agreed policy, applying fundamentally the principle that enforcement should be proportional to the harm caused. The model should not be a procedure in its own right but promote enforcement consistency by confirming some parameters and the relationships between the many variables in the decision making process. The model should provide a framework for making decisions transparent, ensuring those who make decisions are accountable for them;	
		PER.001.d	The development of a quality management system	A robust quality management system can provide focus and control to service operations, setting targets to improve	

				performance, effectiveness and efficiency.	
<p>Notes to the above: The frameworks mentioned above, would provide</p> <ul style="list-style-type: none"> <li>• A clear and organised approach to the planning enforcement service, aiding all those involved in the making of effective and accurate decisions.</li> <li>• Act as a supporting document enabling officers to determine the most expedient and proportionate course of action in any particular circumstances</li> <li>• Set out who takes the decision and how</li> <li>• Include factors that “will” and “will not” influence judgements</li> <li>• Act as a framework to manage workflow</li> </ul> <p>Provide a framework for regular monitoring reports The documents should also differentiate between active and proactive enforcement actions.</p>					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.002	Encourage a dedicated single enforcement team which does not need to compete for attention within a Development Management Team			To provide a management focussed approach to casework within the service which is not affected by alternative performance management criteria within the development management process. Ensuring ALL cases are recorded.	B7(iii) and B7(iv)
		PER.002.a	Create a culture of case management responsibility within the enforcement team. Bring together the responsibility for enforcement with the professional officers of the team.	This would allow for a co-ordinated approach to enforcement, enabling those within other teams to act as consultants to the process. This should include all planning related enforcement functions such as hedgerows and unauthorised works to TPO's. To provide an effective performance management database. The inclusion of the Waste & Minerals enforcement should also be considered, as the current arrangements place high risk to service delivery and performance monitoring.	
		PER002.b	Maintain a close working relationship with other	Professional advice is essential when determining the course of action to be taken. Each team in its own right has	

			development management teams such as DM, Heritage & Design and Building Control.	something to contribute to the operations of an effectively managed enforcement process.	
<p>Notes for PER.002</p> <p>A dedicated single team managed by one individual would ensure consistent working operations across professional disciplines and enable development of improvements to service delivery without the distraction of high profile development management cases.</p>					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.003	Improve relationships with other service providers which affect the decision making process			Robust and reliable relationships remain key to efficient service delivery	B7 (iv)
		PER.003.a	The development of a service level agreement between the planning enforcement team and the legal service team	To create a greater awareness of the interests/expectations of others, including magistrates and the planning inspectorate. To embrace a recognition of the need to promote the value and success of the service	
		PER.003.b	Develop the potential to share database information directly with the legal service team		
		PER.003.c	Make consideration to a closer working relationship with the Building Control team.	The Building Control team have officers who regularly undertake site visits throughout the Borough and may be able to assist in the role of initial response and compliance monitoring. Checking an agreed percentage for compliance.	
		PER.003.d	Provide opportunity for Enforcement officers to comment on proposed standard planning conditions	To allow for the validity of conditions to be set and ensure those drafted would be suitable for enforcement.	

Notes for PER.003					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.004	Improve Performance measures			To provide focus on operational outcomes rather than response actions.	B7 (iii)

		PER.004.a	Develop a new suite of performance measures to include; <ul style="list-style-type: none"> <li>• The number of total complaints received within the period</li> <li>• The average time taken to respond to the complaints</li> <li>• The average time taken for determination/initial site assessment per priority</li> <li>• The number of enforcement notices served</li> <li>• The average time taken to resolve a case</li> <li>• The outcomes of enforcement cases</li> </ul> The number of cases resolved without the need for formal enforcement action.	To provide an overall view to service provision, clarifying the differences between proactive and reactive enforcement. To enable appropriate stage rule development To assist workflow To improve performance monitoring, including scrutiny	
		PER.004.b	Provide an overall target to achieve recommended course of action within 8 weeks	To clarify expectations of all interested parties. To focus teams on priorities. To enable effective organisation	
		PER004.c	Proactively benchmark performance against others	To clearly compare performance of teams with others	
Notes for PER.004 A robust set of performance measure can be used to determine not only service performance and customer satisfaction but always enhance team and individual performance enabling the recognition of endeavours.					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit

					and governance report
PER.005	Improve customer interactions through the website				B7(iii)
		PER.005.a	The inclusion on the website of an interactive form which links to the back office system	This allows for a more robust method of complaint notification and management of such with minimal need for staff support.	
		PER.005.b	The functionality to enable uploading of images to the website attached to the deposited complaint	This will allow a more accurate and co-ordinated response to the complaint	
		PER.005.c	The development of appropriate stage rules for each case type published to the website	Allowing members of the public to “self-serve” in terms of updating progress of the complaint.	
		PER.005.d	The adoption of an online Enforcement register	To comply with statutory obligations and to provide information freely across the region. Promoting transparency.	
		PER.005.e	Improve initial access to the web pages	To make direction to planning enforcement pages more concise and direct	
		PER.005.f	Improve “Plain English” information to those wishing to make a complaint and include service delivery expectations	This would assist in the development of expectations and highlight to those with any interest. This would also reduce the number of unnecessary chase up calls requesting progress information	
<p>Notes for PER.005</p> <p>The current ICT database system has been found to include the facility to provide the above services, although certain works are required to commence functionality of these areas. In particular the link between the back office system and the website has been established for planning applications and the same</p>					

<p>approach should be implemented/commissioned for enforcement cases.</p> <p>The inclusion of an interactive front end form may reduce the number of inaccurate/inappropriate reports received which will focus the efficient operations within the team.</p>					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.006	Improve the provision of technical support to professional staff			Ensure satisfactory allocation of professional resources	B7(iii)
		PER.006.a	Provide support to assist the process of history searches for professional officers	To improve response times to members of the public	
		PER.006.b	Utilise technical support staff and knowledge to act as a "First Contact" facility for professional officers	To improve customer relations.	
		PER.006.c	To answer initial basic telephone queries		
		PER.006.d	To provide a support role when dealing with electronic submission of complaints, making reference to gazetteer and associated systems	To provide a focussed approach to the receipt of complaints and enable efficient use of resources.	
Notes for PER.006					



Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.007	Improve the use of technology within teams			To improve efficiency, performance and capacity management	B7(iii)
		PER.007.a	All caseload to be entered into the current database system. i.e Swift Lg	To allow robust performance management and reporting	
		PER.007.b	Development of the current mapping system	Enforcement notices to include maps indicating locality	
		PER.007.c	The adoption of touch screen technology for site staff	Removing duplication of data entry	
		PER.007.d	Move to a paperless environment where possible	To enable greater flexibility and transfer of data between sites. This will also remove the burden of officers needing to be at managers disposal to answer certain questions	
		PER.007.e	Utilise the database diary functionality	To ensure that management responsibility and health & Safety requirements are fulfilled	
		PER.007.f	Development of the cost based process within the current database system	To identify the true costs of enforcement cases.	
		PER.007.g	Improvement of the mapping facility within the back office system	To allow direct inclusion within enforcement notices to enable website publishing.	
		PER.007.h	Development of on-line receipt	To remove administrative burden.	

			of complaints		
Notes for PER.007					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.008	Provide regular training sessions				B7(iv)
		PER.008.a	Identify within support teams knowledge and experience	The age profile within the current teams contains an older profile than some teams and therefore the service should encourage a training development approach to plan for future resource needs.	
		PER.008.b	Provide regular update training for all elected members on the considerations of enforcement measures. This should be in the form of a workshop environment.	The participation within a workshop training event will recognise the decision making principles and enhance the relationships between elected members and officers.	
Notes for PER.008					
Report Ref:	Recommendations	Consideration Ref:	Measures	Reason	Ref referred to within initial audit and governance report
PER.009	Improve customer	PER.009.a	Adopt a procedure to inform		B7 (iii)

	relationships		residents where complaints impacts are considered high.		
			Where planning applications are received, apply a check within the process to see if an enforcement case exists.	To enable those with an interest to be notified	
			Develop a positive use of media	To ensure the general public are aware of the enforcement system and the actual good work that is being carried out on their behalf. Advertising positive outcomes of enforcement action.	

