

**FINAL REPORT
OF THE
PLANNING
ENFORCEMENT
TASK & FINISH
WORKING GROUP**

**FOLLOWING ITS INQUIRY INTO
PLANNING ENFORCEMENT
FUNCTION**

DATE: 13 MARCH 2023

TERMS OF REFERENCE OF THE TASK & FINISH WORKING GROUP

1.1 To carry out a review of the Council's Planning Enforcement function in relation to current powers, policies, procedures, data on the use of current enforcement powers, effectiveness of approach and assessment of how cases should be prioritised.

THE AIMS AND OBJECTIVES OF THE INQUIRY

2.1 Effective regulation and enforcement is one of the key priorities in the Council's Corporate Plan 2020-2024, under the heading of 'Delivering High Quality Services'. The need for a review of the Planning Enforcement function came about following concerns being raised by a number of Councillors in different parts of the District about its effectiveness in responding to a range of different planning enforcement related matters. Drawing on the key headings within the terms of reference for the Task & Finish Working Group, the aims and objectives of the inquiry were developed through discussion at the group's inaugural meeting on Monday 3rd October 2022 and evolved as the inquiry proceeded.

2.2 The aims and objectives are summarised as follows:

Current Powers

- To review the full set of powers available to the Council for the carrying out of planning enforcement, having regard to the fact that any action is discretionary on the Council and is always expected to be proportionate and appropriate.
- To gain a better understanding of the range of tools available to the Council's enforcement team to resolve complaints – ranging from no action, negotiation or minor interventions, through to formal enforcement action and legal prosecution.
- To explore how the powers and tool available to the Council can be better communicated to those with an interest, including District Councillors, Town and Parish Councils and members of the public.

Policies

- To review the Council's Planning Enforcement Policy which sets out the available powers and the approach that the Council will take when receiving, investigating and, where appropriate, taking action against alleged breaches of planning control.
- To review the associated 'harm risk assessment' which is used by Officers to prioritise the investigation of cases and to inform decisions about appropriate levels of action going forward.
- To recommend improvements to the Planning Enforcement Policy and harm risk assessment as deemed necessary to improve the effectiveness of approach.

Procedures

- To review the full process of dealing with enforcement complaints including the initial receipt of a complaint, responding to the complainant, visiting the premises, identifying and establishing any breaches, carrying out harm risk assessment, choosing a course of action and formal processes thereafter.
- To review the approach to communication with complainants, those the subject of action and other interested parties; and how this might vary depending on the nature of the issue.
- To explore how third parties, such as Town and Parish Councils, might be able to assist the District Council by exchanging information at a local level.
- To recommend improvements to procedures with the aim of improving the effectiveness of approach.

Data

- To gain an understanding, through the interrogation of data, of the scale and nature of enforcement issues in Tendring, including number of complaints/cases received, resolved or outstanding and how they are recorded and monitored – both for internal purposes and for public reporting.
- To develop and recommend a framework for reporting enforcement data and performance to the Planning Committee.

Effectiveness of Approach

- To invite honest feedback from Councillors and other interested parties on the effectiveness of the planning enforcement function based on experiences and issues in their areas.
- To review the resources available to the planning enforcement team when set against the scale and nature of the task – particularly in relation to management structure, number of Officers and skills, knowledge and experience.
- To explore and identify areas where improvements can be made to the effectiveness of the approach and to consider alternative ways in which the enforcement function could be undertaken.

Prioritisation of Cases

- To review the approach to prioritising the inspection of alleged breaches of planning control and determining the level of action required thereafter – having regard to the harm risk assessment.
- To recommend improvements to the harm risk assessment and the approach the Council takes in determining priorities for action.
- Reviewing the decision-making process and the level within the Council that key decisions are taken.

MEMBERSHIP OF THE TASK & FINISH WORKING GROUP

Cllr. Andy Baker (Chairman)
Cllr. James Codling
Cllr. Gina Placey
Cllr. Chris Amos
Cllr. Alan Coley

OFFICER SUPPORT FOR THE TASK & FINISH WORKING GROUP

Gary Guiver (Lead Officer) – Director of Planning
Keith Durran – Committee Services Officer
Hattie Dawson-Dragisic – Performance and Business Support Officer

INVITEES AND PARTICIPANTS

Cllr. Jeff Bray – Planning Portfolio Holder
Lisa Hastings – Deputy Chief Executive and Monitoring Officer
Joanne Fisher – Planning Solicitor
John Pateman-Gee – Planning Manager
Matt Deal – Planning Enforcement Team Leader
Matthew Ramsden – Development Technician – Planning Enforcement
Sharon Harwood-Bee – Planning Business and Support Manager

EXPECTED OUTCOME(S) OF THE INQUIRY

3.1 A series of recommendations aimed at improving the effectiveness of the Council's planning enforcement function in light of concerns raised by Councillors and better mutual understanding between Councillors and Officers of their respective positions. These outcomes to be reported to the relevant Overview and Scrutiny Committee and considered, for action, by the Planning Portfolio Holder and Director of Planning.

ACTUAL OUTCOME(S) OF THE INQUIRY

4.1 That senior Officers shared many of the concerns expressed by Councillors about the planning enforcement function and were already putting steps in place to improve the situation – reflecting a number of Councillors' suggestions. The 19 recommendations set out in this report therefore include some measures that have either already been put in place or are being put in place which respond positively to issues identified.

RECOMMENDATION(S)

The recommendations that the Task & Finish Working Group wish to put forward for consideration by the Resource & Services Overview and Scrutiny Committee are as follows:

- 1) To note that in recent months, following the establishment of the Working Group and the introduction of a new Planning Manager and a new Planning Enforcement Team Leader, and with the full cooperation of the Planning Portfolio Holder and key Officers, notable improvements in Council's planning enforcement function have already been made in response to issues raised and suggestions put forward. These include:
 - the update and subsequent adoption of a new Planning Enforcement Policy and associated harm risk assessment to replace the previous version that had not been reviewed or updated since 2010;
 - an initial review, update and tidying of the Council's database of live enforcement cases to remove cases that have been closed, incorrectly recorded or otherwise superseded by events in order to establish a more accurate baseline of information;
 - more positive engagement of Planning and Planning Enforcement Officers in the Council's Corporate Enforcement and Operation Enforcement Groups to improve working across services on a wide range of enforcement matters;
 - a notable improvement in the willingness of Officers to engage and communicate with Councillors, members of the public and other interested parties in recognition of the concerns raised previously;
 - a notable reduction in the Planning Enforcement Team's reliance on the Council's legal Officers for advice and assistance in carrying out planning enforcement duties; and
 - a concerted effort to recruit new Officers to the Planning Enforcement Team on a permanent basis and by utilising channels to attract ex Police and armed services personnel with relevant transferable skills.

- 2) For the Council to retain the planning enforcement function in-house and to support continued efforts to reduce the Council's reliance on temporary staff employed through agencies and to recruit permanent staff to the Planning Enforcement Team – utilising channels aimed at targeting ex Police and armed forces personnel with transferable skills and with the offer of on-the-job training and development;

- 3) To require Officers to undertake a specific and immediate update to the Planning Enforcement Policy and associated harm risk assessment to incorporate changes, as detailed in Appendix 1 to this report, that are aimed at improving clarity, relevance and effectiveness and for the updated version to be reported to the Planning Committee for its consideration and approval at the earliest meeting practicable;**
- 4) To thereafter require Officers to undertake an automatic review of the Planning Enforcement Policy and associated risk harm assessment every four years for the Planning Committee's consideration and approval to ensure it is kept up to date and responds accordingly to changes in law, policy, circumstances and trends in enforcement-related activity – allowing for earlier reviews where necessary;**
- 5) To empower the Director of Planning, in consultation with the Chairman of the Planning Committee and the Monitoring Officer, to escalate and expedite (as appropriate) enforcement action where there are considered to be exceptional matters of public interest with implications for the reputation of the Council that are not necessarily identified through the standard scoring approach in the harm risk assessment;**
- 6) For Officers to prepare quarterly reports on enforcement caseload and performance to go to the Planning Committee, for information, which will contain data on:**
 - number of complaints received/registered in the quarter;**
 - number of cases closed in the quarter;**
 - number of live cases presented by category, electoral ward and time period since receipt; and**
 - enforcement-related appeal decisions;**
- 7) To support the continued work of the Council's internal Corporate Enforcement Group and Operational Enforcement Group in considering cross-service and cross-body enforcement matters;**
- 8) For Officers to continue the process of reviewing cases recorded on the database system to remove closed/irrelevant cases and re-categorising them to provide an accurate baseline for case management and reporting of data going forward;**
- 9) That Officers provide an annual training session, held in person, for all District Councillors covering the powers, policy and processes around planning enforcement together with case-study examples and exercises – with the first training session to be held within the two months following the May 2023 local elections (and following subsequent local elections);**

- 10) That any Councillor who is a member of the Planning Committee (either as a permanent or designated substitute Member) to attend the planning enforcement training as a mandatory requirement;**
- 11) That the Director of Planning be asked to offer or facilitate similar training sessions for Town & Parish Councils;**
- 12) For Officers to incorporate within internal systems, reminders to automatically update complainants, interested Ward Councillors and other relevant parties (where appropriate) every 21 days with information on the progress of cases – even if it is to advise of no or limited progress – unless earlier or more frequent updates can be given or are required (these 21-day reminders will follow the initial 21-day notification currently in place following the receipt of a complaint);**
- 13) For Officers to respond within 48 working hours, to emails from Councillors relating to planning enforcement matters so they can be suitably informed when advising members of the public;**
- 14) To note that a significant proportion of live enforcement cases in the District relate to breaches of occupancy conditions at caravan and holiday parks, many of which are complex, sensitive and long-standing with a variety of issues to be taken into account. To resolve these breaches in full and deal with the implications thereafter would require significant additional and dedicated resources. It is therefore recommended that the Planning Policy and Local Plan Committee is asked to consider developing a strategy or policy to guide a coordinated and long-term approach to the application and enforcement of occupancy conditions across the District having regard to matters such as impact on the tourism industry, flood risk, health and safety, quality of life, ecology, disability and homelessness;**
- 15) That for site inspections, Officers must always use Council equipment for capturing photographs and other data and are supplied with hi-visibility clothing (preferably labelled 'Tendring District Council Enforcement');**
- 16) For Officers to pro-actively monitor compliance with planning conditions and obligations wherever practical and where resources allow – and work constructively with owners, developers and applicants to identify and resolve potential future compliance issues before they give rise to a breach of planning control and possible enforcement action;**
- 17) For the Planning Service to consider incorporating standard advice into pre-application responses and validation requirements for applications setting out, and seeking agreement to, the Council's expectations for development to be carried out with the necessary consents and compliance thereafter with any planning conditions or obligations imposed;**

18) For Officers to review and update the form on the Council's website for reporting enforcement complaints to make it more user-friendly and to allow complainants to provide as much information as they can to describe the issue they wish to report; and

19) For the Director of Planning to consider, on a case-by-case scenario and in liaison with the Council's Communications Manager, publicising successful enforcement outcomes to demonstrate the Council's commitment to planning enforcement.

CHRONOLOGY

Meeting 1: Monday 3rd October 2022

5.1 The inaugural meeting of the Working Group was held in person on Monday 3rd October 2022 and the main topic of discussion was the scope of the inquiry and matters for discussion. The matters covered, which would provide the basis for subsequent work included the following:

- Decision-making route for adoption of the Planning Enforcement Policy (why approval is by the Planning Committee and not the Planning Policy and Local Plan Committee or other body).
- The need to review and update the Planning Enforcement Policy and associated Harm assessment criteria on an ongoing basis (particularly given that the last policy had not been updated for many years).
- The staffing structure and staffing levels in the Planning Enforcement Team, whether they were sufficient, included the right knowledge, skills and experience and the reliance on agency staff.
- Concern about weaknesses in communication between the Council, Councillors, complainants and the community (given local examples where there has been a perception of no action, or a lack of willingness to take action).
- Communicating successes of enforcement action to the community, to ensure the Council is never seen as a 'soft touch' when it comes to taking affirmative action (mindful that some cases will require a degree of sensitivity and confidentiality in the way they are handled publicly).
- How Town and Parish Councils could assist the District Council by being eyes and ears on the ground when it comes to planning enforcement matters, but ensuring they have a sufficient level of understanding about what the District Council is and is not able to do and the need to take proportionate and appropriate action in the public interest.

- Concern about the scale of enforcement cases and the ability of the current enforcement team and resources within it to address that caseload – with a requirement for regular feedback on number of cases opened, closed and any backlogs.
- The need for proactive monitoring and enforcement – particularly on larger development sites where there are concerns about developers flouting planning conditions and not treating neighbours and the wider community with the respect they require.
- Whether enforcement officers should have a more visible presence, through their attire, so that residents, developers and others can see that the Council does carry out active enforcement and that planning enforcement matters are taken seriously (albeit understanding that some cases may best be dealt with discretely).
- Whether developers/builders or others with a track record of planning offences should be treated more rigorously or their issues be dealt with greater priority as a warning that the Council is not a soft touch and repetitious offences will not be tolerated (albeit understanding that it is the nature of the breach that justifies the course of action, as opposed to who caused it).
- To discuss whether there would be any benefit in considering outsourcing the Council's enforcement function to a private company or other contractor.
- Need for discussion on how enforcement cases are handled, recorded and how decisions are taken with regard to the appropriate course of action.
- That the Working Group would want to speak to the Council's Planning Manager, the new and previous Enforcement Team Leaders, the Council's Deputy Chief Executive (and Monitoring Officer) and the Council's Planning Solicitor, amongst others as part of future meetings.

Email to all Members requesting input: 6th October 2022

5.2 Following the inaugural meeting, the Chairman of the Working Group, through the Council's Committee Services Officer, reached out to all Members of the Council via email to ask for opinions on planning enforcement matters and for input into future matters for discussion. The email of 6th October 2022 was as follows:

"Dear Members

As you are aware there have been a range of Task and Finish groups set up to scrutinise certain areas of Tendring District Councils operations.

One group is looking at Planning Enforcement.

The Chairman of this Task and Finish group has asked for your input. He would like to hear your thoughts and experiences of dealing with Planning at Tendring District Council, whether they are first hand or what you may have heard from residents in your respective Wards.

What aspirations do you think TDC should thrive to achieve?

Your input is vital.

Please email democraticservices@tendringdc.gov.uk with your comments.”

5.3 Responses to the email were received from three Councillors.

5.4 One Councillor described his experience of planning enforcement as ‘abysmal’ and referred to several issues where a successful resolution had not been found. They also cited an occasion where the service failed to attend a liaison meeting with residents and a developer to discuss blatant and constant planning breaches – leaving him to resolve the issues himself. That Councillor encouraged the Working group to look into the option of outsourcing planning enforcement and using in-house resources to focus on the determining of planning applications **[see recommendation 2]**.

5.5 Another Councillor was of the view, and it was the view of residents, that enforcement officers do not get out quickly enough to look at properties where work that could be a breach of planning was ongoing to issue stop notices if necessary. They also suggested that Officers needed to be more proactive in their dealings with builders who disregard their planning conditions, citing a large housing development **[see recommendation 16]**. This Councillor felt that more staff were needed in planning enforcement to look around the district more regularly and to send out the message ‘not to mess with Tendring’.

5.6 The third Councillor raised the issue of a boundary fence in their Ward that had been erected without planning permission that was accepted by Officers as being in breach of planning but where Officers had determined, in line with the harm risk assessment, that it would not be expedient or in the public interest to pursue enforcement action. That decision was placing the Councillor in a difficult position in dealing with the complainant and giving rise to the impression that the Council does not take breaches of planning control seriously.

Meeting 2: Wednesday 26th October 2022

5.7 In the Working Group’s second meeting on Wednesday 26th October 2022, which was held online, there was a run through the process for receiving and inspecting enforcement complaints, with input from the Council’s Development Technician – Enforcement; an update on enforcement caseloads; and a discussion on the merits or otherwise of potentially outsourcing the planning enforcement function to an external body.

Process for receiving and inspecting enforcement complaints

5.8 The Council's Development Technician – Enforcement gave a PowerPoint presentation (see Appendix 2 to this report) setting out the approach to receiving and processing a planning enforcement complaint up to the point of deciding what enforcement action, if any, might be required.

5.9 The Council's enforcement team can receive enquiries via several channels including:

- The TDC website;
- Direct phone call;
- Planning support/reception enquiries;
- Via Councillors and Town and Parish Councils;
- Via email; and
- From employees.

5.10 Officers then consider whether or not the enquiry relates to planning matters over which the Council would have powers to enforce. If there is not considered to be a planning breach, or the issues raised fall under other powers or departments, the complainant will be notified of that within 15 days. Where a planning-related matter has been identified, it is logged as a case on the Uniform system, given a unique reference number and allocated to an Officer for further consideration. Complainants' details are recorded on the system but are kept confidential. An acknowledgement letter is sent via email or post to the complainant explaining the next stages of the process. Internally, there is a 21 day reminder on the system so that the complainant will be contacted, even if it is to let them know if the Officer is still investigating the case but yet to reach a conclusion. Relevant documents relating to the case are stored on the Council's IDOX document management system.

5.11 On day 1, having sent out an acknowledgment letter, the Officer will conduct a desktop study using available records and information to help determine the location, planning history, land charges register, use and relevant planning policies pertaining to the property.

5.12 On establishing whether or not there has been a planning breach, the Officer will carry out an initial triage using the harm risk assessment (appended to the Council's Enforcement Policy). Assessment against the criteria in the harm risk assessment will give the case a score which, in turn, will help to establish (using a traffic light system – red (priority 1), amber (priority 2) and green (priority 3)) the level of priority to be given to carrying out further investigation including a physical site visit. I.e. breaches causing a great deal of harm will be prioritised over cases where the harm is judged to be lower and action is less urgent.

5.13 Where a site visit is determined as being required, Priority 3 green cases will generally receive an Officer visit within 10 working days, Priority 2 amber cases will receive a visit within 5 working days and Priority 1 red cases will receive a visit within 2

days – or as soon as practicable (within 24hrs) depending on the nature of the complaint (e.g. works to Listed Buildings or Protected Trees might necessitate an urgent inspection). However, Officers will exercise judgement where certain factors suggest a higher priority should apply than indicated by a low score in the harm risk assessment.

5.14 When the inspection is carried out, photographs and other evidence are placed on the Uniform and IDOX system and the Officer will update the harm risk assessment accordingly if they see something on site that might indicate a higher or lower priority for further action should be given.

5.15 Having carried out the inspection and reassessed the severity of the case, Officers will then consider the most appropriate course of action going forward.

5.16 Members questioned at what level of seniority within the Officer hierarchy the decisions on prioritising cases are taken. Officers explained that the judgement can be taken by any enforcement officer dealing with the case – with the nature of many breaches being quite clear, similar and requiring a fairly standard and established course of action; however where cases exhibit factors that might indicate a greater level of complexity, a more junior officer will liaise with more senior staff including the Enforcement Team Leader, Planning Officers, Planning Manager or Director of Planning, as appropriate, in agreeing the best course of action [**see recommendation 5**].

5.17 Members enquired as to how evidence is recorded and documented, if needed for the purposes of future action or prosecution. Officers explained that all information is uploaded onto the Council's IDOX document record management system but are kept secure and are only accessible to relevant Officers. All information uploaded onto the system are dated and uploaded on the day of receipt. The Chairman of the Working Group indicated some concern about how evidence is recorded and suggested that further discussion on this matter might be required.

5.18 There was a short discussion about whether Officers have the technology to take photographs on site and for them to be immediately and automatically uploaded to the system, or whether the Officer has to return to the office or to their computer to do the uploading. It was confirmed that Officers have to upload the photos after their visit. It was revealed that Officers were possibly using their own cameras and phones to take photographs – which represented a risk to the security and confidentiality of information being collected. The Director of Planning and Members agreed that this practice needed to end immediately and that TDC equipment must be used for data collection [**see recommendation 15**].

Update on cases

5.19 The Director of Planning provided a short recap on a presentation given by the Planning Manager at an earlier all-Member briefing session which had provided an up-to-date account of the planning enforcement caseload and progress on other enforcement-related matters.

5.20 It was reported that the new Planning Enforcement Policy and associated harm risk assessment had been considered by the Planning Committee on 1st September 2022 and that an updated version, reflecting comments received, had been circulated to Members of that Committee for final comments before the policy was to be adopted and published.

5.21 It was also reported that a new Planning Enforcement Team Leader had joined the Council and had started work on 25th October 2022. The Director of Planning explained that even in his first couple of days, the new Team Leader was already making a positive impression on staff and had experience of undertaking a similar review of the planning enforcement function at his previous authority which would likely be of benefit to the current review. Advertisements for new Enforcement Officers, targeting ex-Police and Military Personnel were going through internal Human Resource processes but were expected to go public within a week.

5.22 It was explained that following the Planning Manager's review of the enforcement cases recorded on the Council's Uniform system, it had been possible to reduce the overall number from 459 on 5th October 2022 down to 269 on 22nd October. It had been discovered that a considerable number of cases should have been removed from the system having either already been resolved, having become irrelevant or having been recorded incorrectly. The 269 cases on the updated file still required further cleansing and the categories of breach to which they related would still require a review to ensure their categorisation was useful and accurate **[see recommendation 8]**.

5.23 It was reported that since April 2022 (over seven months), enquiries to the Council had averaged around 24 a month with closures at around 23 a month. The distribution of cases by Parish or non-Parished area broadly reflected the geographical character of the District with larger numbers of cases in the main urban areas (most notably Clacton, Harwich, Frinton/Walton) – as would be expected; albeit with the notable exception of St. Osyth being the location of the largest proportion of cases due to the number of caravan and holiday parks which are the subject of numerous cases covering a high number of individual plots, related to breach of winter occupancy conditions. Of the 269 cases, 83 related to caravan/holiday park occupancy with the other 186 cases relating more generally to a wider range of planning enforcement matters. It was confirmed that Bel-Air in St. Osyth was going to be the subject of particular investigation in the coming winter season **[see recommendation 14]**.

5.24 It was asked if the enforcement case data could be broken down by Ward rather than Parish to paint a more accurate picture of the geographic distribution of enforcement cases – particularly where larger urban areas are made up of a number of Wards – such as the unparished area of Clacton **[see recommendation 6]**.

Discussion on outsourcing Planning Enforcement

5.25 In response to the suggestion from some Councillors (outside of the Working Group) that the Council should consider outsourcing the planning enforcement function to an

external body, the Director of Planning gave an explanation as to why he would have concerns about that approach. There was no knowledge of any other local authorities that completely outsource their planning enforcement function, but like other authorities this Council does buy-in support from the private sector in the form of agency staff, where required to cover vacancies during periods where it is difficult to recruit or to deal with high levels of demand.

5.26 Whilst it was accepted that agency staff do provide valuable assistance to the Council in helping to manage workloads, they can sometimes (but not always) lack the local knowledge, political/community awareness and ability to get to the area quickly in response to urgent complaints offered by permanent or more locally-based Officers.

5.27 The Director of Planning expressed his reservations about putting the whole function out to an external body because the relationship between enforcement officers, elected Members, Planning Officers and other Officers within the Council is critically important to the sharing of useful information and intelligence, and achieving effective enforcement outcomes. These relationships would, in the Director of Planning's opinion, be lost if the function was dealt with externally as there would be a division between the local authority and the contractor. The close relationship between Enforcement Officers and Planning Officers and the ongoing work they do together to investigate planning history and the legal and policy aspects of cases was cited as a particular matter of concern if the authority were to consider outsourcing to an external body.

5.28 Another concern would be the resource available to the Council if an external contractor was failing to perform to the level expected by the Council's Members and Officers and the potential implications, complications, risks and costs associated with resolving any dispute over performance or having to suspend or cancel a contract. Whereas retaining the function in-house enabled Members and Officers to have frank and honest discussions about performance (as being carried out through the discussions of the Working Group) and to develop practical solutions together.

5.29 The Director of Planning concluded that getting the right team of Officers in place with the right set of skills and experience and with strong leadership would be a more appropriate approach to resolving Members' concerns about planning enforcement than outsourcing. There was general agreement from the Members of the Working Group with the Director of Planning's observations on the topic of outsourcing and not to pursue that option any further at this stage **[see recommendation 2]**.

Case studies

5.30 The Chairman of the Working Group invited Members to put forward any 'case study' examples of enforcement matters or complaints that they had been involved in to share their experiences.

5.31 One Member gave an example of an overgrown site where he had reported the issue to the Planning Enforcement Team but had not received any feedback for a number of

months and then, on having to chase Officers for some feedback, was informed that the case had been dropped. The case was then re-opened and it took a further two months to establish ownership of the land who was then instructed to tidy it, which resulted in a further two-month delay before a half-hearted attempt by the owner at tidying – leaving rubbish in the middle of the site during the dry months of summer. Eventually the site was tidied, but the whole process of reporting the complaint and resolution took over a year. The Councillor raised concern that the site might be allowed to get untidy again and asked whether Officers actively monitored sites following the resolution of an enforcement complaint to ensure they remain resolved.

5.32 Members of the Working Group went on discuss the issue with communication and the failure of Officers to respond quickly to Councillor requests and to provide updates without having to be chased for them by the Councillors. It was suggested that officers build in to their processes, the need to automatically provide regular updates to Councillors and members of the public on progress on enforcement cases – even where there has been little or no progress. The Director of Planning agreed with the suggestion and, having learned that the Uniform system contains a 21 day reminder to update complainants following the registration of a complainant, would explore the potential to incorporate additional rolling reminders to provide ongoing updates. Improvements communication would be the topic of further discussion **[see recommendation 12]**.

5.33 Members were asked to forward any other case study examples to the Chairman of the Working Group and the Director of Planning for discussion at future meetings.

Discussion on working with Town and Parish Councils

5.34 The Working Group went on to discuss how the District Council could work more closely with Town and Parish Councils as the potential ‘eyes and ears on the ground’ to assist in reporting and monitoring planning breaches. However, to fulfil such a role would require more information and training for Town and Parish Councils on the planning rules, the enforcement powers available to the District Council and the way it approaches enforcement complaints – to give them a level of confidence in determining what may or may not constitute a planning breach and what action might be appropriate and available **[see recommendation 11]**.

5.35 The Director of Planning accepted that in the past there had been regular training on planning enforcement and other elements of planning for both District Councillors and Town and Parish Councils but that it had been a number of years since the last session. With a new Planning Enforcement Policy in place, it might be the right time to re-instate such training. The Working Group agreed with the principle of more training but there would be both timing and resourcing issues to consider through the recommendations of this report. Also, most Town and Parish Councils have their own Planning Committee and it might be up to those Committees whether or not they wanted to take part in such training **[see recommendations 10 and 11]**.

Discussion on the comments received from Councillors

5.36 The email comments received from three Councillors were considered. The Director of Planning advised that, in his view, getting permanent staff in place with the right skills and strong leadership as well as reviewing processes and administrative processes were key to resolving all the issues raised. The introduction of the new Planning Enforcement Team Leader and the work already underway to improve the service were therefore steps in the right direction.

5.37 With that in mind, the Director of Planning was asked to confirm the number of positions in the structure for planning enforcement, the number of staff in post and how this compares with what might be needed. He confirmed that the structure included six positions – the Team Leader and five Enforcement Technicians – but that three of the four Technician posts were being covered by consultants employed through recruitment agencies. With the right management and processes in place and permanent staff who can be more responsive on the ground, it was felt that the number of posts ought to be adequate to deal with the scale of the workload – however, the new Enforcement Team Leader would need to be given time to assess whether that was correct, particularly given the scale of historic/backlog cases that would need to be addressed or otherwise closed.

Meeting 3: Thursday 17th November 2022

5.38 In the Working Group's third meeting on Thursday 17th November 2022, which was held online, there was an update from the Council's Planning Manager on caseloads, a discussion on the Planning Enforcement policy and criteria within the harm risk assessment, a discussion with the Council's new Planning Enforcement Team Leader about his experiences of reviewing the enforcement function at his previous authority and initial thoughts on the situation at Tendring.

Update on caseloads

5.39 The Planning Manager gave a short PowerPoint presentation providing an update on caseloads and progress on other improvements. This identified that, on 17th November 2022, there were 269 current enforcement cases under consideration of which:

- 100 breaches of planning condition (mainly related to holiday park occupation);
- 35 related to changes of the use of land;
- 55 related to building operations; and
- 18 were in relation to untidy sites.

5.40 A breakdown of cases per Officer was also given – showing that an enforcement Officer could at any time be dealing with between 50 and 70 cases but that some Officers had wider responsibilities including overall management and leadership of the team and monitoring development sites which would justify a lower number of general enforcement cases within their workload.

5.41 It was confirmed that one of the Council's Enforcement Officers employed through an agency was leaving the authority but that permanent Enforcement Officer positions had gone out to advert and that channels to target ex-Police and military personnel were being used **[see recommendation 2]**.

5.42 The Planning Manager noted that a lot of information was still being stored at the Town Hall in paper form and time and resource needed to be invested in digitising as much information as possible – relevant to enforcement and other sections of the planning service **[see recommendation 8]**.

Discussion on Risk Harm Assessment

5.43 Councillors Baker and Coley led the discussion on the harm risk assessment, highlighting criteria within it for questions and clarifications. A summary of the discussion is set out as follows and the specific proposals for changes to the harm risk assessment are set out in Appendix 1 to this report **[see recommendation 3]**.

- Criteria 1: Urgency

5.43.1 Questions over the respective meanings of 'stable' (0 points), 'ongoing' (1 point) and 'getting worse' (2 points) – particularly the difference between stable and ongoing – which could be construed to mean the same thing. Officers explained that there could be a differentiation between development that has already taken place and could therefore be classed as stable; and development that is in the process of construction and which could, if necessary, be stopped and where a higher priority to investigation and action might be justified.

- Criteria 5: Complainant

5.43.2 Questions over the need for a distinction between 'named' complainants (2 points) and 'anonymous/malicious' complainants (0 points) and a concern that anonymous complaints from people worried about revealing their identity will not be investigated.

5.43.3 Officers gave assurances that complainant details are kept confidential but also clarified that anonymous complaints won't be ignored, but in the context of the harm risk assessment, they receive a lower overall score which would affect the priority with which an investigation is carried out. Officers also explained that where an anonymous complaint highlights the possibility of a criminal offence being carried out (such as unlawful works to listed buildings or protected trees), that complaint will still be given a high level of priority. Members suggested that there will be many cases where anonymous complaints can be made to a Ward Councillor who can take the complaint up on their behalf.

- Criteria 6: Timescale

5.43.4 Questions over the meaning and justification for the different timescales before lawful rights exist and enforcement action can, by default, no longer be taken i.e. 'not applicable' (0 points), 'less than 3 months old' (0 points), 'more than 1 year' (1 point) and 'less than 6 months' (2 points). Officers agreed that these timescales are confusing and are less about the assessment of harm, and more about the risk of the Council losing the ability to carry out enforcement action by default by virtue of time elapsed and, potentially, the reputational damage that might come about. Members and Officers both agreed that the criteria relating to timescale was unhelpful and would best be deleted from the risk harm assessment when it is next reviewed.

- Criteria 7: Contrary to Local Plan policy?

5.43.5 Question as to whether a conflict with Neighbourhood Plans should also be included as a consideration – attracting 2 points in the harm risk assessment. It was explained that Neighbourhood Plans must, themselves, conform to the District Local Plan and together they form the wider 'Development Plan' for consideration by the Council in any planning matters. Suggestion that the wording could be amended either to say 'contrary to Development Plan policy' or 'contrary to 'Local Plan/Neighbourhood Plan policy'.

- Criteria 9: Is harm irreversible?

5.43.6 Questions over the rationale behind giving 2 points for irreversible harm and 0 points for where the harm is reversible, when it might appear more sensible to prioritise cases where the harm can be reversed. Officers explained that the intention was to give higher priority to those cases where, if development were allowed to proceed, the harm would be irreversible – for example damage to listed buildings which would, in any event, be given high priority; however the wording could potentially be improved. It was agreed that the wording could be improved to make the intention of the criteria clearer.

- Criteria 10: Intensity of activity

5.43.7 Questions asked as to what 'intensity of activity' actually means. Officers explained that intensity could mean different things depending on the nature of the development and could relate to the scale of the development, the intensity or length of time. Each case would require a level of judgement.

- Criteria 13: Previous enforcement action/planning history

5.43.8 Questions as to whether the previous enforcement action/planning history (attracting 1 point in the risk harm assessment) would relate to the site/premises in

question, or to the developer/owner. Officers confirmed that it would be relevant to the site/premises only and that the Council could not take action on the basis of the historic behaviour of a particular developer/owner/applicant which could be seen as persecution of an individual or company. Members asked that the wording be made clearer to clarify that point.

5.43.9 It was also explained that the planning history would be particularly relevant in cases where planning permission had been refused for a development, but the developer/owner went ahead and started building anyway. The case for action in such instances would be generally therefore be strong.

- Criteria 15: Undesirable present?

5.43.10 Officers explained that for this criteria, Officers would be considering whether taking no enforcement action would set a precedent for other people to carry out similar work. There was a short discussion of an example case where Councillors were concerned that no action could send the wrong impression to others who may wish to try something similar. It was later agreed that Criteria 15 was best removed from the assessment on the basis that all breaches of planning control are undesirable and have the potential to be copied by others where enforcement is not carried out.

5.44 As well as the suggestions in relation to existing criteria within the harm risk assessment, the Planning Manager suggested that an additional criteria specifically in relation to whether an alleged breach affected a listed building or protected tree might be beneficial in giving such cases additional prominence.

Reflections from the new Planning Enforcement Team Leader

5.45 The Council's new Planning Enforcement Team Leader was invited to talk about his experience of undertaking a similar review of planning enforcement function at his previous authority and for his initial reflections on Tendring's Planning Enforcement Policy and practices. He started by setting out his background and experience and talked about the 2020 review of enforcement practices at his previous authority.

5.46 At the previous authority there was no harm risk assessment, but there was a triage process involving senior Officers looking at cases when they came in and then deciding if any action was required before allocating to Officers with relevant experience. The previous authority also made more use of the Uniform system and had more formal processes in place that might benefit Tendring going forward.

5.47 An initial review of Tendring's Enforcement Policy had been undertaken along with a review of the formal notices used when undertaking enforcement action – which has revealed some elements of wording that are out of date and need to be improved to avoid legal problems or complications further up the line if action needed to be escalated. It was recognised that there had been problems with planning enforcement at Tendring in the past and it was hoped that the experience and knowledge gained from the previous

authority would assist in improving the situation going forward.

5.48 Members asked if there were elements of the Enforcement Policy that needed to be looked at and reviewed sooner rather than later or whether an ongoing process of review was required. The Planning Enforcement Team Leader felt that the basis of what was required in the policy was already in place; that there were no immediate areas of concern; but that the policy could be improved and evolved as necessary through regular ongoing review.

5.49 The Team Leader was asked for his initial thoughts on the size of the establishment (e.g. staff resources) at Tendring and whether it was sufficient to deal with the scale of the workload, particularly drawing on any comparisons with his previous authority. Whilst he did not believe the team was over-staffed, his very initial view was that the size of the team was potentially sufficient – pointing out however that his previous authority covered two districts and needed more staff as a consequence. He considered that caseloads per Officer were fairly similar to the previous authority but that problems around recruitment when people left the authority were just as relevant there, as they have been in Tendring. It was suggested that a more informative view on resources in the enforcement team might be given in six months, once the new Team Leader has had time to fully understand the issues and pressures and establish new processes and practices.

5.50 The Planning Manager added that time was still needed to ascertain whether the available resources were sufficient to deal with the backlog of cases and ensuring records were updated, corrected and digitised as appropriate – and that this was as relevant to other sections of the planning service as well as enforcement.

5.51 The Enforcement Team Leader did note that the main difference in the nature of cases in Tendring compared to other areas is the number of caravan and holiday parks and the issues around breach of occupancy conditions that relate to them [**see recommendation 14**].

Approach towards 'repeat offenders'

5.52 Mainly covered under the discussion on Criteria 13 of the harm risk assessment, the Enforcement Team Leader confirmed that the Council can only consider enforcement action in relation to the breach of planning control on a particular site – not on the historic behaviours of the owner, developer or applicant. Whilst it was acknowledged that some individuals or companies may have built up a reputation for disregarding the rules, planning enforcement is not a punitive process.

5.53 However, where there are concerns about the behaviour of individuals or companies, it can be that such matters are escalated to Councillors or senior Officers such as the Director of Planning to have frank discussions with those concerned to apply appropriate pressure – pointing out the impact their behaviours may be having on their reputation and perception at the authority which could, in turn, have a bearing on maintaining positive relationships, trust and cooperation in achieving smooth progress and positive outcomes

on any current or future planning applications.

5.54 In the context of applying the risk harm assessment, it is the history of previous offences at the site that is relevant. The Planning Manager gave an example of where planning history on a site can be particularly relevant in considering enforcement action i.e. where planning permission had been previously sought for a development but refused, but where the owner, developer or applicant had ignored the refusal of permission and carried on building regardless – resulting in an inexcusable and blatant breach of planning control that would, in most cases, lead to enforcement action.

Discussion on how decisions are taken in determining the course of action

5.55 The Enforcement Team Leader was invited to talk through the process of investigating a case and determining what course of action to take – building on the advice given at a previous meeting by the Development Technician - Enforcement.

5.56 He emphasised the importance of trying to obtain as much information as possible on receipt of a complaint – with photographic evidence from the complainant being particularly useful **[see recommendation 18]**. He advised that he was reviewing closely the way that complaints, investigations, evidence and discussions are documented – wanting to introduce a better level of formality than currently exists. This is particularly important if evidence is to be relied on at a later stage for formal enforcement action or prosecution.

5.57 In establishing a breach of planning of planning control, Officers then consider the best options available for seeking to resolve that breach. In the Team Leader's previous experience, the majority of breaches can be resolved without the need to carry out formal action which will inevitably require a high level time and resource. Resolving breaches informally, through negotiation and discussion, is therefore always the preferred course of action.

5.58 In many cases, an owner will be asked to submit a planning application to regularise the development and resolve the breach, having considered the likelihood that planning permission would be granted through consultation with Planning, Heritage, Highways or other professional Officers as appropriate. It is generally not considered reasonable to resort to formal enforcement action or stopping a development in cases where it is likely that planning permission would be granted if an application were submitted.

5.59 If informal negotiations aimed at resolving a breach fail to resolve the matter, then consideration is given to formal action which could include a breach of condition notice or an enforcement notice. Where formal action is required, there could then be liaison with the Council's legal team. However, the Enforcement Team Leader mentioned that in his first few weeks at Tendring he had observed that there had possibly been too high a reliance on support from the legal team to provide planning judgement and opinion, when its advice is best sought on the word of law and the legal aspects of taking action. For planning judgement and opinion, drawing on the advice and experience of Planning

Officers is a better approach than placing unnecessary pressures on the legal team.

5.60 It was explained that the full enforcement process on some cases could take years, as there is a right of appeal against enforcement notices and even when appeals are dismissed, whilst the prosecution can result in a fine, the breach could remain unresolved and legal action to resolve the breach by forcing an owner to remove a structure or take other action can take a long period of time.

5.61 Based on his initial observations, the Enforcement Team Leader was quite surprised as to how quickly Tendring has been resorting to formal enforcement notices, resulting in the time and resources involved in dealing with any appeal, without having exhausted the informal avenues for resolving breaches. He also explained the need for the Council to be confident that, when issuing a formal notice, it has the evidence to fight an appeal and ensure there are no deficiencies in a notice that might result in a successful legal challenge and associated costs.

5.62 At his last authority, it was notable that of 657 cases he dealt with, only 17 required a formal enforcement action. The others were resolved through informal interventions.

5.63 When asked why Tendring might have historically been too keen to issue formal enforcement notices, the Enforcement Team Leader speculated around the reliance on agency staff with a limited presence in, and knowledge of, the area and there being less of a closer relationship with the Council's Planning Officers to determine the best course of action than was the case at his previous authority. He acknowledged that there could be a generally negative public perception about the use of retrospective planning applications to resolve breaches; however that approach is often the best way to achieve a resolution. Inviting retrospective planning applications also gives the Council the ability to impose conditions to mitigate or guard against any potential harmful impacts going forward.

5.64 The Council cannot force an owner to make a retrospective planning application, but in cases where the Council invites an application, but the owner ignores that advice and fails to make an application, Officers will need to consider the extent of the breach and how likely it would be that permission would be granted in deciding whether or not to escalate the matter to formal enforcement action. In some cases it might not be expedient to take further action and the breach is tolerated (which could impact on an owner's ability to sell the property at a later stage). However, where there are questions over whether a development would get permission, it may be expedient to take further action.

5.65 The Enforcement Team Leader was asked to give his view on when legal advice is sought with regard to the evidence required for enforcement action. He explained that, for the purposes of defending an appeal against an enforcement notice, the Enforcement Officers in liaison with Planning Officers would be able to determine what evidence is necessary. However, if clarification on any legal points were required or the case required an injunction or a prosecution, then legal support would be sought on compiling the necessary evidence which could include witness statements and video evidence.

5.66 The Director of Planning advised that, in exceptional cases where an appeal against an enforcement notice involves a Public Inquiry (as opposed to a hearing or written representations), then the Council might seek Counsel's advice and hire a Barrister to lead the evidence and carry out cross-examination.

Meeting 4: Tuesday 10th January 2023

5.67 In the Working Group's fourth meeting on Tuesday 10th January 2023, which was held online, there was a discussion with the Council's Deputy Chief Executive (and Monitoring Officer) and the Council's Planning Solicitor on the role of the legal team in planning enforcement matters and the governance of decision making; followed by some discussion with the Director of Planning on communication and Member expectations.

Discussion about legal input in enforcement matters

5.68 The Council's Deputy Chief Executive (and Monitoring Officer) and the Council's Planning Solicitor were invited to explain the role of the legal team in planning enforcement matters.

5.69 The Planning Solicitor confirmed that she would only tend to get involved in planning enforcement matters where legal advice has been sought, but would also provide assistance as necessary in advising on gathering evidence or carrying out interviews for the purposes of a potential prosecution. The decision as to whether or not to carry out a prosecution will lie with the relevant service Director in consultation with the Council's Head of Legal Services. For complex cases, where a more detailed report is required to document and justify the reasons for action, the Monitoring Officer will also be involved.

5.70 Historically, there had been an over-reliance on the legal team to provide advice on matters that should have been well within the capability and knowledge of the Planning Enforcement Team to progress. Since the introduction of the Council's new Enforcement Team Leader, there had already been a notable reduction in the amount of queries going to the legal team – indicating a much improved level of confidence and competence in dealing with day to day enforcement matters.

5.71 It was explained that, in deciding whether or not to carry out a prosecution, Officers needed to follow the Crown Prosecution Services' (CPS) advice on justifying action – including the need for there to be a realistic prospect of conviction; the need for sufficient and robust evidence; and consideration of whether prosecution would be in the public interest. It was made clear that determining the public interest in carrying out a prosecution in line with CPS advice was an entirely separate exercise to determining the public interest in investigating an enforcement complaint through the harm risk assessment.

5.72 It was explained that very few enforcement cases make it all the way to prosecution and that there were other legal tools, including formal cautions and injunctions that can be employed.

Governance in planning enforcement matters

5.73 The Monitoring Officer was asked to confirm the governance arrangements and the role of elected Members in enforcement matters. She explained that planning enforcement was not an executive function for Cabinet decisions, but a function of Full Council which, in line with the approach taken by most other Councils, is delegated to the Planning Committee which, in turn, is delegated to Officers. It was emphasised that this is the approach taken in most Councils and has been for many years.

5.74 There are however some cases of a complex or high profile nature where Officers may feel it necessary to revert certain issues back up to the Planning Committee for decisions. The example of enforcement action against the breach of occupancy conditions on caravan and holiday parks is one fairly recent example where the Planning Committee was invited to decide a course of action, with the details included in a confidential Part B report. On other matters, the Director of Planning would sometimes consult the Chairman of the Planning Committee before making a decision on how to proceed [**see recommendation 5**].

Communication and Member expectations

5.75 In the discussion around communication and Member expectations, the Group reflected on the amount of information that had been obtained through the inquiry to date and that Member expectations of the planning enforcement process might be best managed by re-instating regular, in-person, training for Members on an annual basis and similar training for Town and Parish Councils [**see recommendations 9, 10 and 11**]. It was suggested that this begin as soon as possible following local elections in May 2023.

5.76 Members of the Group went on to share concerns and experiences around communication; with examples of cases where Councillors were not receiving any response from Officers on the progress of cases despite there being chronic and blatant breaches of planning control causing great distress to residents – who then chase their Ward Councillors for information. It was suggested that the Council's systems needed to incorporate more reminders to Officers to update complainants on an ongoing basis on any progress – over and above the single 21-day reminder following receipt of a complaint [**see recommendations 12 and 13**].

5.77 It was suggested that the pre-application process could be used to set out some clear ground rules to owners, developers and applicants that planning conditions must be honoured or else face the consequences of enforcement action. The Director of Planning explained that not all applicants for planning permission use the pre-application process. The possibility of including some form of binding agreement or terms and conditions as a validation requirement for planning applications to re-affirm the Council's expectations around compliance was another suggestion [**see recommendation 17**].

5.78 Members asked for the form on the Council's website for reporting enforcement complaints to be reviewed as it was considered not to be user-friendly and placed limits on the amount of useful information that could be provided. Given the advice of the Planning Enforcement Team Leader about the importance of obtaining as much up-front information as possible, it was agreed that an update would be beneficial and this should form one of the Working Group's recommendations **[see recommendation 18]**.

Meeting 5: Thursday 19th January 2023

5.79 In the Working Group's fifth meeting on Tuesday 19th January 2023, which was held online, the Group reflected on discussions and suggestions to date and discussed the approach to publicising successful enforcement outcomes to demonstrate to the public that the Council takes enforcement seriously and that there are consequences of failing to comply with the planning rules.

Giving regular updates

5.80 The Members agreed that following the initial 21-day reminder for Officers to update complainants following receipt of a complaint, the systems should build in further reminders to provide updates on ongoing 21-day basis and that the complainant or Councillor should be notified if Officers are minded to close a case **[see recommendations 12 and 13]**.

Publicising successful outcomes

5.81 On the subject of publicity, the Director of Planning explained that where there are successful outcomes to formal enforcement action, careful thought would need to be given to the nature of the case and public interest in the case before doing any publicity. For example, it might not be appropriate to draw media attention to smaller enforcement cases of a sensitive or personal nature with little wider public interest, but a successful action against a developer or persons committing a criminal offence might be justified. Each case would have to be considered carefully on its merits, and in consultation with the Communication's Manager and legal colleagues **[see recommendation 19]**.

Pro-active enforcement/monitoring

5.82 There was a discussion on whether the Council should be pro-actively monitoring developments and carrying out enforcement action against breaches as necessary, rather than responding to complaints. The Director of Planning explained that Officers do monitor the compliance of larger developments with conditions and legal agreements, but mainly to ensure that certain requirements have been met at certain 'trigger points' e.g. the payment of developer contributions before a set number of dwellings or occupied, delivery of highways works, transfer of open space etc.

5.83 Officers do not generally undertake unannounced spot inspections of developments due to the sheer number of schemes under construction at any one time (particularly in recent years when there have been many developments), however Officers are in regular contact with site managers, particularly on larger schemes if or when issues arise or if complaints are received and will inspect developments as necessary at key points. Members asked that consideration be given to utilising resources within the team to be more pro-active on such developments in light of previous concerns **[see recommendation 16]**.

Other discussions and updates

5.84 As well as discussion within the Task & Finish Group meetings, the Chairman of the Working Group had discussed with the Council's Planning Business and Support Manager the possibility of using apprentices to support the work of the Planning Enforcement Team as part of the Council's approach to addressing recruitment problems by 'growing our own' staff. Whilst the opportunity was acknowledged, it was felt that the sometimes confrontational aspect of the planning enforcement role required personnel with a base level of planning knowledge as well as experience and confidence in dealing with the public – and it would therefore not be appropriate to use young apprentices in this role until they had either progressed to Officer level and gained suitable confidence in such matters, or there was a permanent, well established and stable team around them for mentoring and support.

5.85 The Chairman also asked for updated caseload figures for the final version of this report. As of 17th January 2023, the figures updated figures were as follows:

- **Total: 258 cases**
 - 80 Breach of Planning Consent
 - 17 Change of use of Land
 - 1 Failure to build in accordance with Approved Plans
 - 144 Other types of Breaches and untidy sites
 - 1 Unauthorised Advert
 - 14 Unauthorised Building Works
 - 1 Work to TPO Tree

5.86 Finally, the Chairman asked for an update on recruiting new permanent staff to the planning enforcement team, as correct week commencing 23rd January 2023. A recruitment campaign was initiated following the appointment of the Planning Enforcement Team Leader in October 2022.

5.87 The campaign was targeted toward ex-Police and ex-military, officers, and alongside this ran the advertisements on the TDC website and social media pages. The campaign ran from November 2022 until early January 2023 with the aim of capturing as wide an audience as possible. Ten applications and CVs were received from a range of candidates including three as a result of advertising on the ex-police, and military, sites. Interviews have been arranged for 31st January and 6th February 2023 and all shortlisted applicants

have accepted the invitation to interview. It is anticipated that any successful applicants will be offered positions on 7th February with start dates dependent upon any required notice periods or completion of contracts.

DETAILED FINDINGS OF THE INQUIRY

6.1 An overview of the findings of the inquiry in response to each of the objectives is set out below.

Current Powers

6.2 Objective: To review the full set of powers available to the Council for the carrying out of planning enforcement, having regard to the fact that any action is discretionary on the Council and is always expected to be proportionate and appropriate.

6.3 Outcome: The inquiry has resulted in a greater understanding between the Members of the Working Group and Officers as to the powers available to the Council and the approach taken to prioritising and handling enforcement complaints; and the pressures faced by Councillors when approached, in their wards, about potential enforcement issues. The recommendations set out in this report are to widen that understanding through Member and Officer training sessions to be held following the 2023 local elections and thereafter on an annual basis; and that similar training be made available to Town and Parish Councils [see recommendations 9, 10 and 11].

6.4 Objective: To gain a better understanding of the range of tools available to the Council's enforcement team to resolve complaints – ranging from no action, negotiation or minor interventions, through to formal enforcement action and legal prosecution.

6.5 Outcome: As above (see 6.3).

6.6 Objective: To explore how the powers and tool available to the Council can be better communicated to those with an interest, including District Councillors, Town and Parish Councils and members of the public.

6.7 Outcome: As above (see 6.3).

Policies

6.8 Objective: To review the Council's Planning Enforcement Policy which sets out the available powers and the approach that the Council will take when receiving, investigating and, where appropriate, taking action against alleged breaches of planning control.

6.9 Outcome: It is recommended that the Planning Enforcement Policy is kept under

regular review – with an update date at least every four years to ensure it is updated in respect of legislation, national policy, pertinent issues and trends. An immediate review is also recommended to take on board the Group’s suggested improvements to the policy and the harm risk assessment **[see recommendations 3 and 4]**.

6.10 Objective: To review the associated ‘harm risk assessment’ which is used by Officers to prioritise the investigation of cases and to inform decisions about appropriate levels of action going forward.

6.11 Outcome: That the Enforcement Policy be reviewed immediately to incorporate changes that embrace the Group’s recommendations. In addition, a number of specific improvements to the harm risk assessment including the deletion of Criteria 6 (Timescale), renaming Criteria 7 to ‘Contrary to Local Plan/Neighbourhood Plan?’, wording improvements to Criteria 9 (Is harm reversible?) to make its purpose and meaning clearer and a specific criteria in relation to listed buildings and protected trees **[see recommendation 3]**.

6.12 Objective: To recommend improvements to the Planning Enforcement Policy and harm risk assessment as deemed necessary to improve the effectiveness of approach.

6.13 Outcome: As above, with the revised versions being reported back to the Planning Committee for its consideration and approval as soon as practicable **[see recommendation 3]**.

Procedures

6.14 Objective: To review the full process of dealing with enforcement complaints including the initial receipt of a complaint, responding to the complainant, visiting the premises, identifying and establishing any breaches, carrying out harm risk assessment, choosing a course of action and formal processes thereafter.

6.15 Outcome: The inquiry has resulted in a greater understanding between the Members of the Working Group and Officers as to the process of dealing with enforcement cases. There are however a number of recommendations for improvement going forward.

6.16 Widening the understanding of the process through Member and Officer training sessions to be held following the 2023 local elections and thereafter on an annual basis; and that similar training be made available to Town and Parish Councils is one recommendation **[see recommendations 9, 10 and 11]**.

6.17 Another recommendation is to include a requirement that complainants receive an update from Officers every 21 days on progress on their case **[see recommendation 12]** and ensuring Officers use Council-issued equipment only and, where possible and appropriate, wear marked high visibility clothing **[see recommendation 15]**.

6.18 Objective: To review the approach to communication with complainants, those the subject of action and other interested parties; and how this might vary depending on the nature of the issue.

6.19 Outcome: The inquiry has revealed some serious concerns about the level and quality of communication from Officers involved in planning enforcement matters in responding to complaints and keeping complainants and other interested parties (included Ward Councillors) updated on any progress. There were numerous examples given where Councillors had needed to chase Officers for updates, cases where Officers had been reluctant to meet or discuss matters with Councillors and other cases where issues had been ongoing for months where there the case had either been closed or no further progress had been made, but interested parties had not been updated to that effect.

6.20 Members of the Working Group and Officers were in agreement that significant improvements needed to be made to improve this aspect of the service as poor communication and engagement was undermining public confidence in the Council's ability to deal with planning enforcement matters in an effective manner. Ensuring the planning enforcement team had the right level of resources, strong leadership and the right balance of skills, experience and local knowledge were considered key to resolving the concerns around communication as well as systems being put in place to remind Officers to provide updates – even where it is to advise that there had been no progress [**see recommendations 12 and 13**].

6.21 Objective: To explore how third parties, such as Town and Parish Councils, might be able to assist the District Council by exchanging information at a local level.

6.22 Outcome: The recommendation to widen annual training out to Town and Parish Councils would improve their understanding of planning enforcement powers, policy and procedures and give them more confidence in reporting and providing updates on issues within their areas [**see recommendation 11**].

6.23 Objective: To recommend improvements to procedures with the aim of improving the effectiveness of approach.

6.24 Outcome: As above.

Data

6.25 Objective: To gain an understanding, through the interrogation of data, of the scale and nature of enforcement issues in Tendring, including number of complaints/cases received, resolved or outstanding and how they are recorded and monitored – both for internal purposes and for public reporting.

6.26 Outcome: The inquiry revealed that the Council's database of enforcement cases required a fundamental overhaul as it had been poorly managed over a number of years –

resulting in hundreds of cases being recorded as 'live' despite having been resolved or superseded by events; or otherwise recorded under a variety of categories which made data very difficult to interpret and report in a helpful and consistent manner. It was also determined that the software and systems available to Officers had not been used to their full potential and that the new Enforcement Team Leader was already considering how to better utilise them.

6.27 The Council's Planning Manager and Planning Enforcement Team Leader have already made significant progress in reviewing the cases on the database and removing and closing those cases that had either been resolved, incorrectly recorded or superseded by events with the aim of establishing an accurate baseline from which to work **[see recommendations 1 and 8]**.

6.28 Objective: To develop and recommend a framework for reporting enforcement data and performance to the Planning Committee.

6.29 Outcome: It had already been agreed by the Planning Portfolio Holder that the Planning Committee would receive quarterly reports on enforcement data and performance **[see recommendation 6]**; but the inquiry has assisted in determining the information and level of detail that can and should be contained in those reports going forward – following on from the Officers' work on tidying the database and establishing an accurate baseline **[see recommendations 1 and 8]**.

Effectiveness of Approach

6.30 Objective: To invite honest feedback from Councillors and other interested parties on the effectiveness of the planning enforcement function based on experiences and issues in their areas.

6.31 Outcome: As part of the inquiry, the Chairman of the Working Group invited all TDC Councillors to put forward their comments for consideration. With the exception of the Working Group Members themselves, direct responses were only received from three Councillors. However, Members and Officers were able to recall and draw upon their experiences of both historic and current cases where Councillors had raised concerns – which were broadly reflective and consistent with the matters raised in the Working Group discussions.

6.32 Objective: To review the resources available to the planning enforcement team when set against the scale and nature of the task – particularly in relation to management structure, number of Officers and skills, knowledge and experience.

6.33 Outcome: The inquiry revealed that there had been long-standing difficulties in recruiting permanent staff into the planning enforcement team – issues common to many local authorities. These issues are mainly attributed to the sometimes confrontational nature of the work (which require certain skills and personal attributes) and a general shortage, nationally, of people with relevant planning knowledge and experience. This had

led to a strong reliance on agency staff to cover vacant positions which, whilst helpful as a temporary arrangement in response to caseload pressures, could not be a sustainable approach going forward.

6.34 Aside from the costs of employing staff through an agency, such staff are often located away from the District and might be unable to respond to issues quickly when working remotely and, by virtue of their temporary nature, will often lack a degree of local knowledge and political awareness in dealing with certain matters. There will also be a limited level of commitment to long-term service improvement when contracts are let on a short-term basis. One clear recommendation from the Working Group is to therefore prioritise the recruitment of permanent staff to the positions within the enforcement team and reduce reliance on agency staff **[see recommendation 2]**.

6.35 The Working Group acknowledged challenges faced by the Council in recruiting permanent staff to enforcement and other planning roles, given the shortage of qualified and experienced planners in the market. It was therefore considered that an alternative strategy should be to target people with relevant or transferable skills from other career paths and offer training and support on the job. People with a background in the Police or the armed services, for example, are known to often make good planning enforcement officers due to their good communication skills, record keeping and ability to handle or diffuse confrontational situations.

6.36 Discussions with the Council's new Enforcement Team Leader suggest that the number of posts within the enforcement team is likely to be the right level, but this would need to be kept under review.

6.37 Objective: To explore and identify areas where improvements can be made to the effectiveness of the approach and to consider alternative ways in which the enforcement function could be undertaken.

6.38 Outcome: Agreement that the planning enforcement function be retained in house **[see recommendation 2]** and that improvements in communication and other practices, along with good leadership and permanent recruitment of staff would be key to addressing concerns raised.

Prioritisation of Cases

6.39 Objective: To review the approach to prioritising the inspection of alleged breaches of planning control and determining the level of action required thereafter – having regard to the harm risk assessment.

6.40 Outcome: The Members were provided with a detailed run through of the enforcement process from receipt of complaint, determining the right course of action and also the legal aspects and considerations when looking at injunctions or prosecution.

6.41 Objective: To recommend improvements to the harm risk assessment and the approach the Council takes in determining priorities for action.

6.42 Outcome: As set out in report above.

6.43 Objective: Reviewing the decision-making process and the level within the Council that key decisions are taken.

Outcome: The Working Group were appraised of the decision making process and the governance in place around delegation of powers to officers for enforcement purposes. Some concern was raised about Officers' ability to determine when action was or was not in the public interest, based on the findings of the harm risk assessment. It was however explained that, where necessary, the Council could expedite action where, despite the findings of the harm risk assessment, action was still judged to be in the public interest. It was also explained that the Director of Planning, in liaison with the Chairman of Planning Committee and the Monitoring Officer could escalate action if necessary, or in exceptional cases, reports could be taken to Planning Committee **[see recommendation 5]**.

IMPLICATIONS OF RECOMMENDATIONS

7.1 Recommendation 2: Retaining in-house planning enforcement, reducing reliance on agency staff and targeting ex Police and armed forces personnel for permanent recruitment.

- Financial: Cost involved in targeting publications for ex-Police and armed forces for recruitment, but significant potential savings in reducing reliance on agency staff, if recruitment is successful. Cost involved in providing on the job training and mentoring both through formal training courses and internal training from Enforcement Team Leader – however, providing such training often helps to build commitment to the Council from the Officers.
- Legal: Avoids need to develop, manage or enforce any outsourced contract.
- Future Service Delivery: Seeks to recruit people with transferable skills relevant to the running of an effective planning enforcement service who can develop local knowledge and good political and community awareness. Retains the ability for close liaison between Enforcement Officers, Planning officers and other Officers within the authority to achieve best outcomes.
- Impact on the public: Improved service achieved by recruiting people with relevant skills who can develop local knowledge and political/community awareness.

7.2 Recommendations 3 and 4: Immediate and ongoing updates and amendments to the Planning Enforcement Policy and harm risk assessment.

- Financial: Covered within existing resources.
- Legal: Ensures the policy and the Council's approach is kept up to date with the relevant legislative frameworks.
- Future Service Delivery: Updates seek to ensure a more effective approach to planning enforcement and a more useable, unambiguous and understandable harm

risk assessment.

- Impact on the public: Ensures a more effective service to the benefit of the public.

7.3 Recommendation 5: Empowering the Director of Planning to expedite enforcement action on cases of public interest and reputational risk to the Council.

- Financial: Costs involved in Officer time and external support to pursue formal enforcement action in cases that might otherwise not be judged to be expedient following the standard harm risk assessment approach – with the risk of unsuccessful outcomes and associated costs.
- Legal: Potential for unsuccessful outcomes and associated costs in pursuing formal enforcement action in cases that might otherwise not be judged to be expedient following the standard harm risk assessment approach.
- Future Service Delivery: Need to ensure that departures from the harm risk assessment to expedite action are exceptional, justified, genuinely in the public interest and not politically biased.
- Impact on the public: Risk of raised expectations around the likelihood of the Council expediting enforcement action where certain case are singled out.

7.4 Recommendation 6: Quarterly reports to the Planning Committee on enforcement caseload and performance.

- Financial: Covered within existing resources.
- Legal: Some sensitive information will not be able to be reported as part of the Committee report for public inspection – requiring much of the data to be anonymised and high-level.
- Future Service Delivery: Provides for a better level of accountability and transparency on performance which is key to future improvement.
- Impact on the public: Better transparency around the scale and nature of enforcement work the Council is in involved in.

7.5 Recommendation 7: Continued engagement of planning enforcement in corporate and operational enforcement groups.

- Financial: As current.
- Legal: As current.
- Future Service Delivery: As current.
- Impact on the public: As current.

7.6 Recommendation 8: Continued review and tidying of the database of live enforcement cases.

- Financial: Cost of Officer time and possible temporary dedicated resource required to complete the exercise whilst allowing day-to-day enforcement work to continue.
- Legal: Need to ensure the legal status of any live enforcement cases are properly recorded and retained within the records.
- Future Service Delivery: More accurate and up to date data will enable the more effective deployment of resources to deal with new and backlog caseload.
- Impact on the public: Enables more useful and accurate data to be reported to the Planning Committee and for resources to be deployed in the most effective way to

serve the public.

7.7 Recommendations 9 and 10: Annual training on planning enforcement for Councillors and for it to be mandatory requirement for Members to sit and vote on Planning Committee.

- Financial: Cost of Officer time and possible external support to carry out the training.
- Legal: Requirement to record and ensure Councillors have received the mandatory training when sitting and voting on Planning Committee. Need to ensure training is legally up to date and correct.
- Future Service Delivery: Improved knowledge of planning enforcement amongst Councillors and Officers will enable a more effective service delivery – both in considering enforcement action and making planning decisions.
- Impact on the public: Enables Councillors and Officers to provide more informed guidance and advice to members of the public when asked about potential planning enforcement matters.

7.8 Recommendation 11: Annual training on planning enforcement for Town and Parish Councils.

- Financial: Cost of Officer time in preparing, facilitating and running the training.
- Legal: Need to ensure training is legally up to date and correct.
- Future Service Delivery: Improved knowledge of planning enforcement amongst Town and Parish Councils will enable them to assist the District Council in identifying and monitoring potential planning breaches.
- Impact on the public: Enables Town and Parish Councils to provide more helpful guidance and advice to their residents when they raise issues relating to planning enforcement.

7.9 Recommendation 12: Automatic updates for complainants, interested Ward Councillors and other relevant parties on progress with enforcement cases every 21 days.

- Financial: Cost of Officer time to give regular updates – albeit set against the cost, and reputational issue, of dealing with aggrieved complainants who have to chase for updates. Some Officers will be spending considerable time phoning or emailing customers in and around dealing with cases. With good management and processes in place, this cost could be covered within existing resources but will need to be kept under review.
- Legal: It may not always be possible to share information of a sensitive nature or report positive progress which could bring about some frustration for Councillors or members of the public.
- Future Service Delivery: Better level of service to complainants who will feel that the Council is taking their case seriously and that progress is being made.
- Impact on the public: As above.

7.10 Recommendation 13: Responses within 48 working hours to Councillor emails.

- Financial: Covered within existing resources and saves Councillors having to chase Officers for information.
- Legal: It may not always be possible to share information of a sensitive nature or report positive progress which could bring about some frustration for Councillors.
- Future Service Delivery: The better and more quickly informed Councillors are about issues in their ward, the better placed they will be to assist and advise members of the public.
- Impact on the public: As above.

7.11 Recommendation 14: Strategy/policy for coordinated and long-term approach to caravan and holiday park occupancy conditions.

- Financial: Significant additional temporary resource to update the Council's records on occupancy at caravan and holiday parks and compile a robust report. This is set against the potential to reduce the number of enforcement cases (and associated costs) relating to caravan and holiday parks if the Council comes to a view on whether to regularise some breaches.
- Legal: There will be a variety of factors including planning law, national and local planning policy and human rights to take into consideration when devising an appropriate strategy. External legal advice might also be required. A significant change in policy would likely need to be incorporated into a future review of the Local Plan.
- Future Service Delivery: Would potentially enable resources to be more focussed on addressing breaches of occupancy condition on a selected number of sites, retaining capacity to deal with a wider range of enforcement matters.
- Impact on the public: Mixed views amongst the public as to whether caravan and holiday parks should be allowed permanent year round occupation with particular concerns around flood safety in some locations, impact on tourism industry, crime and disorder, deprivation and living standards. Any strategy would need to carefully weight up various factors in the public interest.

7.12 Recommendation 15: Use of Council equipment for site inspections and provision of high visibility clothing.

- Financial: Cost of additional equipment and related insurance.
- Legal: Issues around the security and confidentiality/privacy of captured data. Also consideration of staff safety and the implications of high levels of visibility.
- Future Service Delivery: Further processes would need to be put in place to ensure the appropriate use of equipment and ongoing maintenance.
- Impact on the public: Need to consider carefully the use of high visibility clothing depending on the nature and sensitivity of cases.

7.13 Recommendation 16: Pro-active monitoring of compliance.

- Financial: Depending on the extent of pro-active monitoring and the number of developments being monitored at any one time, the cost of Officer time alongside the need to respond to complaint-related cases. The resource requirement might

extend significantly beyond existing staff numbers in the structure depending on how pro-active the team is expected to be.

- Legal: Pro-active monitoring is already carried out to a degree under the powers available to the Council, but this recommendation may require additional resource.
- Future Service Delivery: Either additional staff resources would be required to take on additional pro-active monitoring, or otherwise existing resources diverted away from reactive enforcement – depending on the level of pro-active monitoring expected.
- Impact on the public: Reduced likelihood of public complaints about non-compliance in cases where the Council has identified breaches through its own investigations.

7.14 Recommendation 17: Standard advice on Council's expectations around compliance to be incorporated into pre-application advice and validation process.

- Financial: Covered within existing resources.
- Legal: No additional weight can be given to the case for enforcement action if an applicant chooses not to follow the advice given. All alleged breaches of planning control will be dealt with in line with the Enforcement Policy and the wider legislative framework. Some applicants might object to an additional validation requirement, when the imposition of conditions themselves imply the Council's expectations around compliance.
- Future Service Delivery: Unlikely to have a significant impact.
- Impact on the public: Unlikely to have a significant impact.

7.15 Recommendation 18: Update of online complaint form.

- Financial: Achievable within existing resources – could reduce the amount of desktop and on-site research needed if complainants are given the opportunity to provide a greater level of detailed information.
- Legal: None – so long as personal and sensitive details remain confidential.
- Future Service Delivery: The more information can be provided by the complainant, the more effective the initial investigation can be.
- Impact on the public: Officers might be able to investigate more cases in a shorter period of time if complainants are given the opportunity to provide more detailed information to assist initial investigations.

7.16 Recommendation 19: Publicity of successful enforcement outcomes.

- Financial: Cost of Officer time in preparing press releases and dealing with subsequent press/other enquiries.
- Legal: It may not always be possible nor prudent to share information of a sensitive nature. Possible libel action if the subject of enforcement action takes exception to what the Council says in the media.
- Future Service Delivery: None.
- Impact on the public: Could potentially send a message that the Council is serious about planning enforcement and deter people from trying to circumvent the planning rules.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Current Planning Enforcement Policy

https://www.tendringdc.gov.uk/sites/default/files/documents/planning/planning_policy/Enforcement_Policy_acc.pdf

Current Harm Risk Assessment Prioritisation Scheme [Planning Enforcement Harm Assessment Prioritisation scheme \(tendringdc.gov.uk\)](#)

APPENDICES

Appendix 1: Recommended changes to the Planning Enforcement Policy and Harm Risk Assessment Prioritisation Scheme

Appendix 2: Slides from the presentation given by the Development Technician – Enforcement at meeting 2.

Appendix 3: Slides from the All Member Briefing presentation given by the Planning Manager, (as referred to by the Director of Planning in meeting 2).

REPORT CONTACT OFFICER(S)

Name	Gary Guiver
Job Title	Director of Planning
Email/Telephone	gguiver@tendringdc.gov.uk 01255 686173

APPENDIX 1: Recommended changes to the Planning Enforcement Policy and Harm Risk Assessment Prioritisation Scheme

Planning Enforcement Policy

The first paragraph on Page 19, to be updated with the addition of the following underlined wording:

The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the 21 day update letter sent to complainants to inform them of the investigation findings and proposed action. Where the Council decides that action is required, it will thereafter aim to update the complainants at least once every 21 days on any progress, or as otherwise necessary.

Harm Risk Assessment Prioritisation Scheme

Under section 3 ‘Operational Aspects’, to include the following additional wording to the second paragraph:

The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the Service’s normal 21 day update letter to complainants informing them of the Service’s findings and intended action or, where applicable, that no additional is to be taken. Where the Council determines that action is required, it will thereafter aim to update the complainants at least once every 21 days on any progress, or as otherwise necessary.

In the harm assessment form, to make the following changes (deletions shown as struck through and additions shown as underlined):

Points Allocation		Score
1	Urgency: Is the breach <u>enforcement matter</u> :	Ongoing (1) Getting worse (2) <u>Stable/Paused (0)</u>
2	Highway safety issues:	Yes (2) No (0)
3	Danger to public or animal safety:	Yes (2) No (0)
4	Does the alleged breach cause a statutory or serious environmental issue such as noise pollution, odour, flood risk?	<u>Causes Flood Risk (2)</u> <u>Noise/disturbance concerns (2)</u> <u>Pollution/odour (2)</u> <u>Light pollution (2)</u> <u>Other (1)</u> Yes (2) No (0)
5	Complainant: <u>(Note that all complainant details will be kept confidential, however providing a named contact will enable the Council to update the complainant and seek potentially useful additional information from them)</u>	TDC Member (2) Named member of public (2) Statutory agency (2) Member of staff (2) Parish Council (2) Named (2) Anonymous / malicious (0)

6	<p>Timescale i.e. time remaining before enforcement action can no longer be taken & lawful use rights exist (i.e. 4 years & 10 year enforcement period)</p> <p><u>Affects listed buildings, protected trees, Conservation Areas or other protected assets:</u></p>	<p>Less than 3 months (1) More than 3 months (2) More than 4 years if exempt (0) More than 10 years (0)</p> <p><u>Yes (2)</u> <u>No (0)</u></p>	
7	<p>Contrary to Local the Development Plan or <u>including Neighbourhood Plan</u> policy?</p>	<p>Yes (2) No (0)</p>	
8	<p>Extent of harm</p>	<p>Widespread (2) Local (<u>e.g. within the street area</u>) (1) None (0)</p>	
9	<p>Is harm irreversible (e.g. has it, or could it, result in the loss of irreplaceable assets?)</p>	<p>Yes (2) No (0)</p>	
10	<p>Intensity of activity</p>	<p>High (2) Low (1) Negligible (0)</p>	
11	<p>Breach of planning condition (<u>including divergence from approved plans</u>)?</p>	<p>Yes (1) No (0)</p>	
12	<p>Impact on <u>residential</u> amenity</p>	<p>Long term (2) Short term (1) <u>N/a (0)</u></p>	
13	<p>Previous enforcement action/ <u>relevant</u> planning history <u>at the site/premises</u></p>	<p>Yes (1) No (0)</p>	
14	<p>Safety hazards (specify)</p>	<p>Yes (1) <u>No (0)</u></p>	
15	<p>Undesirable precedent?</p>	<p>Yes (1) <u>No (0)</u></p>	