

INTERIM REPORT OF THE

COUNCIL ENFORCEMENT ARRANGEMENTS

TASK & FINISH GROUP

**FOLLOWING THE ELEMENT OF ITS
ENQUIRY CONCERNING PLANNING
ENFORCEMENT**

DATE: 31 OCTOBER 2023

TERMS OF REFERENCE OF THE TASK & FINISH WORKING GROUP

At the meeting of Council on 11 July 2023, the work programmes for the two Overview and Scrutiny Committees were approved. This included, within the scope of the Resources & Services Overview and Scrutiny Committee, an enquiry into the Council's Enforcement Arrangements. Specifically, an element of the enquiry was to include the following:

“(a) Planning Enforcement (and other areas) where decisions are taken ‘in the public interest’ whether to take particular enforcement action. To look at written statements to support the basis of such judgements and the matters demonstrably weighed up in reaching such decisions,

(b) The existing and possible opportunities for information to be provided by Ward Councillors in respect of matters which may attract enforcement action and decisions to not take enforcement (given the unique role of Councillors in representing their Ward).

(c) The extent to which enforcement powers are looked at in a silo or corporate way to ensure that (within the purposes of particular enforcement powers) the Council considers the ability to address non-compliances robustly.”

This interim report seeks to set out the process of the enquiry into the above (to this point) and its interim conclusions and recommendations concerning Planning Enforcement.

THE AIMS AND OBJECTIVES OF THE ENQUIRY

The enquiry scope was considered to be directed towards the following Corporate Plan 2020-24 Theme: ***“Delivering High Quality Services - Effective regulation and enforcement”***

In approving the scope for this enquiry, Council recorded that the anticipated value of it was:

“To identify the extent to which there are further steps that can be taken to further achieve a fair and equitable use of enforcement powers, taking account of relevant information and that the resources made available for enforcement are used to best effect.”

MEMBERSHIP OF THE TASK & FINISH WORKING GROUP

On 17 August 2023, a decision in the name of the Chief Executive was published constituting the Task and Finish Group. Authority for the decision derived from Minute 5 of the Resources and Services Overview and Scrutiny Committee on 27 June 2023. That provided for Officers to be authorised, in consultation with the Committee Chairman, to make appointments to a Task and Finish Group as approved by Council (Minute 37 of 11 July 2023).

The Membership of the Task and Finish Group was - Cllr Paul Honeywood (Chairman), Cllr M Cossens, Cllr Sue Honeywood, Cllr Morrison, Cllr Smith and Cllr Sudra.

OFFICER SUPPORT FOR THE TASK & FINISH GROUP

Management Team identified as joint lead officers for this whole enquiry as:

Damian Williams, Corporate Director Operations and Delivery
Anastasia Simpson, Assistant Director Partnerships

However, as this element of the enquiry was focussed on Planning Enforcement, it was heavily supported by the **Director for Planning (Gary Guiver)**, together with the Head of Planning and Building Control (John Pateman-Gee) and the Planning Enforcement Manager (Matthew Deal).

Otherwise the Task and Finish Group was supported by the Head of Democratic Services & Elections (Keith Simmons).

INVITEES AND PARTICIPANTS (TO THIS POINT)

In addition to the officers identified in the section headed “Officers support for the Task & Finish Group”, this element of the enquiry was assisted by the Portfolio Holder for Planning and Housing (Cllr Andy Baker).

EXPECTED OUTCOME(S) OF THE ENQUIRY (TO THIS POINT)

The section above sets out the broad “Aims And Objectives Of The Enquiry” which were the expected outcomes of this element of the enquiry also.

By:

- (1) reviewing the progress with the adopted recommendations following the Planning Enforcement enquiry in 2022 (through a Task and Finish Group under the Resources and Services Committee and then adopted by Cabinet following the 4 May 2023 elections);
- (2) using real examples to explore the processes around planning enforcement decisions;
- (3) exploring the numbers of planning enforcement cases, the means of keeping Councillors informed of enforcement cases (and thereby allow them to submit relevant evidence) and update residents;
- (4) learning about the interaction between different elements of the Council with enforcement powers to avoid silo working; and
- (5) considering what underpinned decisions stated as being ‘not in the public interest’ to pursue through planning enforcement mechanisms.

It was intended that there would be an informed position to make recommendations to support the intentions set out in the “Aims And Objectives Of The Enquiry” section above.

ACTUAL OUTCOME(S) OF THE ENQUIRY (TO THIS POINT)

Through the three meetings of the Task and Finish Group, and the receipt of information outside of those meetings from those invited to attend, the Task and Finish Group Members consider that they are in a position to make the recommendations set out below which themselves are designed to meet the intentions set out in the “Aims And Objectives Of The Enquiry” section above.

INTERIM RECOMMENDATION(S)

That the Resources and Services Overview and Scrutiny Committee be recommended to approve the following on the basis that the relevant recipient of the approved recommendation will have the recommendation concerned referenced to them:

- (1) That the pilot monthly update list on planning enforcement cases (showing Ward, location, alleged planning breach and reference number) be rolled out to all Councillors from the start of January 2024 and that, in the list, those cases relating to the same premises be cross referenced or be shown sequentially and allegations of breaches around the creation of Houses in Multiple Occupation be clearly identified.
- (2) That moves be made to utilise the functionality built into the Planning computer software system, Uniform/Public Access, in order to provide up to date details on planning enforcement cases through the website. This use should be timed to commence from 1 April 2024 for new cases, that existing live cases be added as updates are made to those cases during 2024/25 and that in March 2025 a report

be provided to Councillors of those cases not available at that point on the website through the stated software packages.

- (3) That the following be instigated in relation to arrangements across the Council to support joined up and effective enforcement:
- a. The pilot arrangements for action logs being created for meetings of the Operational Enforcement Group (that are associated with matters discussed at meetings of that Group (and are then monitored away from meetings of the Operational Enforcement Group)) be implemented fully going forward. These action logs would also include relevant responses concerning information held by other service areas of the Council about premises that are referenced to the Group by any one of the service areas who are represented on the Group (including 'NIL' responses if appropriate).
 - b. A mechanism of alerting service areas who are represented on the Operational Enforcement Group of live enforcement cases in each of the other service areas on that Group, an ongoing basis, be developed and implemented so as to improve the knowledge flow in the Council of allegations and provide for appropriate enforcement and timely interventions to be made to secure the best interests of the Council, its residents and businesses with a view to raising public confidence in the Council's competence to secure those best interests and deliver 'smarter' working across service areas.
 - c. A protocol be developed setting out the corporate expectations on individual service areas to identify the types of information that service areas hold, and examples of where that information could reasonably be expected to be utilised to support enforcement action or service delivery in that service area or another service area. By way of example, Council Tax Collection could usefully benefit from information around properties being empty for a year as the Council Tax payer may then be subjected to an empty property premium being applied to the Council Tax bill for the property. Another example would be around information that the Licensing Team were to revoke a Licence held by a Business and the potential need for swift action to recover unpaid Business Rates.
- (4) That a mechanism for reviewing activity in respect of planning enforcement cases which have been live for over a year be developed and maintained with a view to avoiding the status quo continuing and resulting in an ever reducing harm assessment in respect of those cases to the point that the infringement/non-compliance becomes permitted by default/legal action is not an option as it is then out of time. The intention of the review is to ensure that issues are not missed and appropriate action is taken by the Council.
- (5) That, as part of good and reasoned decision making, a policy statement be developed or reviewed on the use of 'public interest' within Planning Enforcement as the reason for either taking or not taking particular enforcement action. The policy statement is to set out the considerations officers must take account of. In each case where 'public interest' is to be utilised to support a planning enforcement decision, an assessment of the competing elements of the public interest in taking or not taking that particular enforcement action are to be set out in writing with an indication as to why taking or not taking action outweighs the other public interest and that assessment is to be endorsed by a more senior officer.

CHRONOLOGY

The enquiry was (and its terms of reference were) approved by full Council on 11 July 2023 (Minute 37 refers)

The Membership of the Task and Finish Group was approved on 17 August 2023 (published decision entitled “To constitute the Council Enforcement Arrangements Task and Finish Group” refers)

The first meeting of the Task and Finish Group took place on 14 September 2023

The second meeting of the Task and Finish Group took place on 10 October 2023

The third meeting of the Task and Finish Group took place on 31 October 2023

The Members of the Task and Finish Group approved this report by email exchange between 30 November-4 December 2023.

DETAILED FINDINGS OF THE ENQUIRY

In the early months of 2022, the Planning Enforcement team had over 700 active cases, a sluggish turnover of tasks, and a reliance on three agency officers who lived a considerable distance from the office. This situation necessitated the support of two permanent officers, one of whom worked part-time, shouldering much of the administrative burden and conducting site visits on behalf of the agency officers. Regrettably, this arrangement proved highly ineffective, resulting in a decline in service output, diminished customer service, and a noticeable dip in work quality. Furthermore, Planning Enforcement faced challenges due to the scarcity of reporting tools, primarily stemming from the team's previous heavy reliance on paper-based systems and an absence of systematic reviews, which hindered a comprehensive understanding of the issues at hand. Enhancing the reporting capabilities remains a top priority as the IT support for enforcement work is taken forward.

As of the start of 2023, Planning underwent significant structural changes. We phased out agency staff from the Enforcement team and have reduced their presence in the planning department. This transition coincided with the appointment of a new team leader and the formation of a fresh, motivated team. These changes afforded our existing staff the opportunity to advance in their careers and enabled us to significantly reduce the backlog to a manageable level, effectively more than doubling our output. Ongoing training initiatives for our officers and our commitment to fostering talent from within, in alignment with Tendring's expectations and values, remain integral to our approach. This includes a strong emphasis on exploring informal routes, even though such efforts may not always be quantifiable or readily visible to the public.

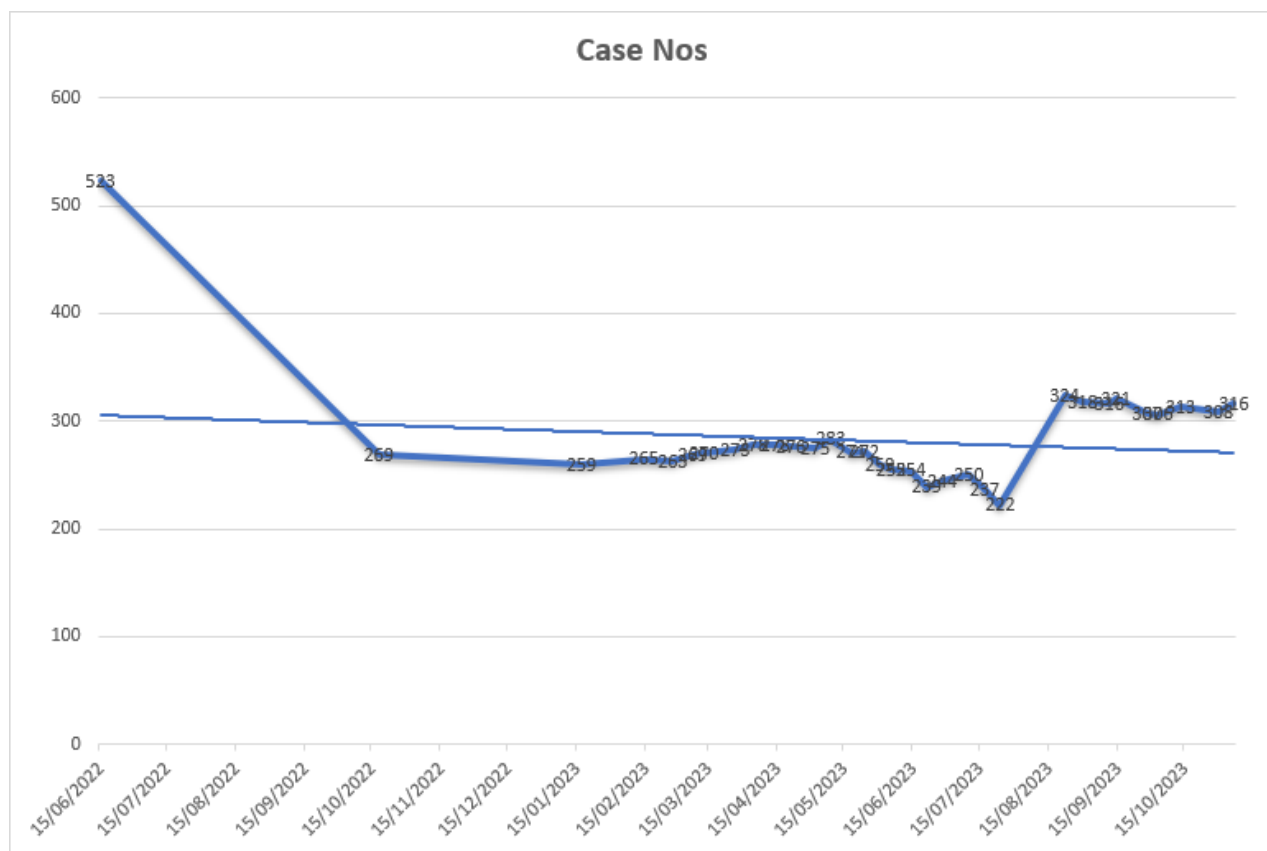
The Council has introduced an Enforcement Policy that incorporates a harm assessment, now actively used to enhance the quality of decisions in our Enforcement processes. This policy, combined with investments in knowledge development and training, has equipped the team to navigate the complex landscape of legal planning requirements and minimise risks for the Council. It underscores the discretionary aspects of the work and the imperative to consider all public interests in a consistent and equitable manner. All updates have been implemented professionally, prioritising requirements, and reporting standards outlined in the enforcement policy. In discussions with the Task and Finish Group, Planning Officers referenced possible developments through using the existing functionality of the Public Access software system to provide live information to access anytime and providing Councillors with periodic lists for enforcement cases.

Throughout 2023, the Planning Enforcement Team has taken proactive steps to engage with broader networks. They have become active members of the Essex Enforcement Forum, consistently participating in the Council's own Operational Enforcement Group,

and willingly accepting additional responsibilities from other teams, such as Environment Health. Moreover, the Team has dedicated efforts to specific projects, including the current Jaywick review, which led to a notable upswing in cases from July 2023, as indicated in the graph below. Next on the prioritisation is a review of the use of the existing Uniform software system to help reporting, a detailed review of processes and addressing the last of the historic cases to conclusion.

The Council's Operational Enforcement Group is an officer body that brings together representatives of service areas across the Council to raise operational matters concerning enforcement.

Planning Enforcement is not entirely masters of their own destiny, with much of its work reliant on a number of factors. These include, good decision making by the local planning authority, unambiguous and well directed conditions that comply with the imposed government tests and work on those matters have also taken place. The benefit of that work will be a few years in the future as development is commenced.



Further to the above, it was noted that, at the time of the Task and Finish Group's meetings on this matter, there was no systematic process in place for alerting Councillors to live planning enforcement cases. Likewise, the software functionality to enable the public/interested parties to directly be able to find out about planning enforcement investigations/and the broad stage those matters were at was not being utilised.

In response to questioning around the cross service working on premises subject to planning violation allegations, the Task and Finish Group was reminded about the limitation on Planning Enforcement to utilise information that was relevant to the planning regime. However, there was a concern that the Council could be separately dealing with the same premises and individuals and not being as aware in each of those service areas of action, investigations, concerns or relevant information from another service area. For

instance, knowledge of a winding up order against a company identified by one service could have implications for permissions, authorisations and enforcement in another. There was not strong evidence that this information exchange inside of the Council was taking place.

Although not directly related to the above point, the Task and Finish Group was advised of a proposal to move to action logs from each meeting of the Operational Enforcement Group to facilitate monitoring of those actions arising out of matters brought to the Group's meetings. This introduction of action logs was supported by the Task and Finish Group.

Looking at the terms of reference for the enquiry, it was the case that the Task and Finish Group did not receive a written policy statement provided in respect of the matters to consider when weighing the public interest in pursuing enforcement action and the public interest in not pursuing that action. For completeness, the terms of reference for the enquiry identified the following as to be provided:

“Written statements on the judgement to be applied when determining whether it is or is not in the public interest and example records where that weighed judgement has been set out (suitably redacted).”

In considering the Planning Enforcement case numbers graph set out earlier, it was reported to the Task and Finish Group that a quantity of these had been live for some time. The Task and Finish Group was made aware that there were timescales after which no enforcement action could be taken. In relation to these older cases there was no existing system to initiate reviews of them; to ensure that appropriate action was taken and that individuals/developers did not simply achieve de-facto permission through inaction over several years.

The Task and Finish Group as part of its work received examples of acknowledgement letters to those raising planning enforcement allegations with the Council and of initial letters sent to those alleged to be in breach of planning obligations. The Task and Finish Group also received prototype periodic lists for enforcement cases for Councillors produced for them to review prepared for them to review by Planning Officers.

At its meetings, the Task and Finish Group looked critically at the implications for this Council, and public funds more generally, where necessary conditions were not applied to planning permissions (such as to re-instate the highway/apply for footway crossings) where development abutted the highway (with a footway) and developer traffic would go over that footway and/or the development would have parking spaces immediately adjacent to the footway. The work underway to review of planning conditions was relayed to the Task and Finish Group who were also advised of the consultation on the verification framework for planning applications. Together, these matters should help address the issues discussed at the Task and Finish Group.

The Director of Planning informed the Task and Finish Group that the five most common planning mistakes, based on records of enforcement complaints closed in the last five years:

- Extensions: At the top Extensions to buildings are the most commonly reported construction without planning permission.
- Outbuildings: The construction of outbuildings, such as sheds or workshops, without planning permission is also quite common.
- Fences: Instances of fences being constructed without the necessary planning permission follow in frequency.
- Change of Roof: Changes to roofs, including raising the height or adding new roof

structures, are reported somewhat less frequently at fourth place.

- Buildings or Structures for Specific Use: Construction of specific-purpose buildings or structures like summerhouses, caravans, and commercial buildings.

The Task and Finish Group considered whether there would be advantage in identifying such errors in public material to seek to reduce such mistakes going forward. Although this was considered, a workable approach to such communication was not agreed to. In part this was because such mistakes probably broadly reflected the number of such applications for planning approval and leaflets included in with the Council Tax bill had a very limited retention/reference period.

The Task and Finish Group also heard of issues with uploading footage from a private drone to support an allegation of a breach of planning requirements. The Group was advised that there was not an issue with submitting footage to the Council. However, it was important for Planning Officers to verify a planning breach before taking direct enforcement action. The format of different video footage being played by the Council may require specialist software if the footage did not play through the standard software provided with Council IT equipment.

Members of the Task and Finish Group expressed general high regard for the work of Planning Enforcement Team recently and that there was an improved position over the last year or so than it was prior to that.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

None

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