

AUDIT COMMITTEE

8 OCTOBER 2026

JOINT REPORT OF THE CORPORATE DIRECTOR (PLANNING & COMMUNITY) AND THE CORPORATE DIRECTOR (LAW & GOVERNANCE)

A.3 IMPROVEMENTS TO THE PROCESS FOR MAKING AND RECORDING DELEGATED PLANNING DECISIONS AND DEALING WITH PLANNING ENFORCEMENT CASES AND RETROSPECTIVE PLANNING APPLICATIONS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report to the Audit Committee improvements in the way that delegated planning decisions are made and recorded that have been implemented by the Planning Service following a thorough investigation carried out by the Council's Monitoring Officer into a formal complaint from a resident.

EXECUTIVE SUMMARY

The discharge of the Town and Country Planning & Development Control functions (including the determination of planning applications) are non-executive functions which, at Tendring District Council, are delegated from Full Council to the Planning Committee and thereafter delegated to Officers on the terms set out within the constitution and associated scheme of delegation and protocols. It should however be noted that these arrangements are set to change from 31 October 2026 following the introduction of new regulations and a standard national scheme of delegation, which require changes to the constitution that will be the subject of a report to Full Council on 13 October 2026.

In May and June 2026, Stage 1 and Stage 2 complaints were made about the Council by a Tendring resident in respect of the handling of a planning enforcement case and retrospective planning application in the District. Among the issues raised, the complainant questioned if the Council had properly and lawfully administered the decision-making process in the determination and approval of the retrospective application – questioning in particular whether certain Officers had the delegated authority to make decisions. The complainant also raised concerns over the circumstances in which enforcement can be resolved through the invitation of a retrospective planning application and how that decision-making is made transparent and clearer to the public.

Although the Monitoring Officer's thorough investigation into the resident's complaint at Stage 2 of the process did not conclude that there had been any unlawful decision making or maladministration, it did identify administrative errors and areas where the Council could improve its processes and procedures to demonstrate greater assurance around the correct implementation of Officers' delegated powers in the determination of planning-related

applications and associated decision making. Whilst the findings and recommendations come as the result of an internal investigation carried out by the Monitoring Officers as opposed to an external investigation, the latter of which require a report to the Audit Committee, Officers consider it appropriate to bring a report to the Committee in the spirit of its terms and reference, on the basis of there being learning points and principles around the accuracy and transparency of decision making that are applicable to all services across the Council.

Notable learning points from the investigation include the need for the Council to be clear in its reports and documentation that the notice of a planning decision is separate from the decision itself and that the 'decision-maker' in respect of planning applications and other planning decisions, when not the Planning Committee, is the Officer checking and signing off the relevant delegated report. There have also been learning points in respect of Planning Enforcement and the need to be clear as to the reasons why it might be appropriate for a retrospective planning application to be invited and that comments or representations made in respect of enforcement cases will not be automatically transferred over for the purposes of consideration of a subsequent retrospective application.

The recommendations arising from the Monitoring Officer's investigation have been implemented by the Planning Service under the direction of the Corporate Director – Planning and Community as set out in this report – which mainly relate to the way in which decision-making processes are documented through reports and decision notices and how decision-makers are identified and named.

The changes are summarised as follows:

- changes to the format of delegated planning application reports to include a space where the signing officer (i.e. the decision maker) can confirm they have robustly considered and approved the report as the decision;
- identification on delegated planning application reports of the job titles of Officers who have delegated authority to sign off planning decisions – including the Corporate Director – Planning and Community, Head of Planning and Building Control, Planning Managers, Principal Planning Officers and Senior Planning Officers;
- review update the template for delegated planning application reports to ensure the correct constitution powers and delegations are referenced (noting that these arrangements are set to change from 31 October 2026);
- inclusion of text in planning enforcement letters and enquiry acknowledgements explaining how, for some cases, retrospective planning applications could be invited;
- inclusion of text in planning enforcement letters and production of a guidance note for customers explaining, and making it clear, that any representations received in respect of enforcement cases will not be automatically transferred to the file for any retrospective application that might come forward later; and

- renaming of what were previously titled 'closure reports' to 'Planning Enforcement Investigation Reports' with a specific section included in the report to record when a retrospective planning application is invited, along with the reasons why.

As well as these specific changes, internal training with relevant Officers is planned to ensure the lessons learnt from the investigation have been understood and taken on board. In addition, the Council's Head of Planning and Building Control (who is also the current chairman of the Essex Planning Officers (EPOA) Development Management Forum) is planning to brief other Heads of Planning in Essex to ensure the lessons learnt are taken on board by other partner authorities where necessary.

RECOMMENDATION(S)

It is recommended that the Audit Committee:

- a) notes the aforementioned improvements to processes and procedures that have been put in place within the Council's Planning Service in respect of decision-making on planning applications the handling of enforcement cases and retrospective planning applications, in line with the Monitoring Officer's recommendations following an investigation into a formal complaint; and**
- b) notes that the learning from the investigation will be shared with other services across the Council.**

REASON(S) FOR THE RECOMMENDATION(S)

To give the Audit Committee assurance that the findings of the investigation into a resident's complaint and the Monitoring Officer's recommendations for action and improvement have been taken on board and have been implemented within the Planning Service. Whilst the investigation found no case of unlawful decision-making or maladministration, the changes will improve the way in which the process is recorded and the way in which decisions are issued in the interest of transparency and being able to demonstrate how the Council has correctly exercised delegated powers.

ALTERNATIVE OPTIONS CONSIDERED

To have made no changes to the processes followed in the determination of planning-related applications and decision-making which could leave the Council vulnerable to further criticism, complaints or potential challenges about the way in which these matters are dealt with – similar to those raised in the aforementioned formal complaint.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The changes set out in this report relate to the way in which the Council administers its duties under the Local Government Act and relevant planning legislation but is linked to the Council's corporate priorities around 'pride in our area and service to residents' and, in particular, 'financial sustainability and openness' in respect of the openness and transparency of decision making.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

In investigating the formal complaint that has led to the changes in the processes and procedures set out in this report, the Monitoring Officer carried out a thorough review of current relevant legislation, regulations, national guidance and the Council's own constitutional arrangements. Notable extracts are set out below.

DETERMINING PLANNING APPLICATIONS

LEGISLATION

The discharge of the Town and Country Planning & Development Control functions (including the determination of planning applications) are non-executive functions as specified in **Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)**.

Part VI of the Local Government Act 1972, Section 101 - Arrangements for discharge of functions by local authorities

- (1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—
 - (a) by a committee, a sub-committee or an officer of the authority; or
 - (b) by any other local authority.

Local Government Act 2000 – Section 9P – local authority constitution

- (1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—
 - (a) a copy of the authority's standing orders for the time being,
 - (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
 - (c) such information as the Secretary of State may direct, and
 - (d) such other information (if any) as the authority considers appropriate.

The Openness in Local Government Regulations 2014 (SI 2014/2095):

Applies to decisions granting planning permission made by an officer acting under delegated powers.

A duty to give reasons (not a “summary” of the reasons) is imposed by the Regulations, as confirmed in [*Shasha v Westminster City Council \[2016\] EWHC 3283 \(Admin\)*](#), per John Howell QC, sitting as a Deputy High Court judge.

Para 24 (of the judgement):

Part 3 of the 2014 Regulations (which contains regulation 7) was made under section 40(3) of the Local Audit and Accountability Act 2014. For the purposes of that Part a “relevant local government body” includes bodies which are local planning authorities (such as district councils, county councils and London Borough Councils such as the City Council). Regulation 7 provides that:

- “(1) The decision-making officer must produce a written record of any decision which falls within paragraph (2).*
- (2) A decision falls within this paragraph if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body either—*
 - (a) under a specific express authorisation; or*
 - (b) under a general authorisation to officers to take such decisions and, the effect of the decision is to—*
 - (i) grant a permission or licence;*
 - (ii) affect the rights of an individual; or*
 - (iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.*
- (3) The written record must be produced as soon as reasonably practicable after the decision-making officer has made the decision and must contain the following information—*
 - (a) the date the decision was taken;*
 - (b) a record of the decision taken along with reasons for the decision;*
 - (c) details of alternative options, if any, considered and rejected; and*
 - (d) where the decision falls under paragraph (2)(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.*
- (4) The duty imposed by paragraph (1) is satisfied where, in respect of a decision, a written record containing the information referred to in sub paragraphs (a) and (b) of paragraph (3) is already required to be produced in accordance with any other statutory requirement.”*

A “decision-making officer” is “an officer of a relevant local government body who makes a decision which falls within regulation 7(2)”. As soon as reasonably practicable after the required record is made it must be made available to the public, together with any background papers, in accordance with the provisions of regulation 8.

The court held, granting the application, that reg.7 did apply to a decision taken under delegated powers to grant planning permission. It was true that planning legislation provided a

comprehensive code of planning control, but that legislation did not by itself provide a comprehensive code that governed by whom and how planning decisions were to be taken by local authorities. Those matters are also governed by the primary legislation applicable to the discharge of their functions by local authorities, including in particular, Parts V, VA and VI of, and Sch.12 to, the Local Government Act 1972 and Part 1A of the Local Government Act 2000, and subordinate legislation made under such Acts.

The argument that the duty to give reasons for the decision to grant permission under reg.7(3)(b) would be satisfied by a notice provided in accordance with art.35 of the Town and Country Planning (Development Management Procedure Order) (England) Order 2015 containing the reasons for any conditions imposed was held by the court to be misconceived. Such a notice was not required to contain the reasons for the grant of permission; it was only required to give reasons for each condition imposed and for any refusal of permission. There was, therefore, an obligation on the decision-making officer to produce a record of the decision to grant planning permission and the reasons for it as soon as practicable after the decision-making officer made the decision.

The 2014 regulations also apply to a decision granting approval of details required by a condition where that affects individual rights (see [SI 2014/2095 reg.7\(b\)\(ii\)](#)): [R. \(on the application of Newey\) v South Hams DC \[2018\] EWHC 1872 \(Admin\)](#).

Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) (the DMPO):

Prescribes the mandatory content requirements for written notices issued by local planning authorities for planning permission or approval of reserved matters. The provision operates within the framework of the Town and Country Planning Act 1990 (the 1990 Act) and establishes transparency and accountability requirements in the development management process.

Article 35 states:

(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters—

[(za) where planning permission is granted, the notice must include—

- (i) information relating to the condition in paragraph 13 of Schedule 7A to the 1990 Act (biodiversity gain condition) including that there are exemptions, transitional arrangements and requirements relating to irreplaceable habitat,**
- (ii) information to note the effect of section 73(2D) of the 1990 Act (earlier biodiversity gain plan in relation to a previous planning permission regarded as approved for purposes of paragraph 13 of Schedule 7A),**
- (iii) details of the planning authority under paragraph 12(1) of Schedule 7A (biodiversity gain in England), and**
- (iv) where development is to proceed in phases and the modifications in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply, a statement to that effect**

and to the effect that biodiversity gain plans are required before development may be begun and required before each phase of development may be begun;]

- (a) where planning permission is granted subject to conditions, the notice must state clearly and precisely their full reasons—
 - (i) for each condition imposed; and
 - (ii) in the case of each pre-commencement condition, for the condition being a pre-commencement condition;
- (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision;

[(1A) References in paragraph (1)(a) to a condition do not include a condition under paragraph 13 of Schedule 7A (the biodiversity gain condition).]

- (2) Where paragraph (1)(a) or (b) applies, the notice must also include a statement explaining, whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.
- (3) Where paragraph (1)(a), (b) or (c) applies, the notice must be accompanied by a notification in the terms (or substantially in the terms) set out in Schedule 5.
- (4) . . .
- (5) In paragraph (1)(a)(ii) “pre-commencement condition” means a condition imposed on the grant of a planning permission which must be complied with—
 - (a) before any building or other operation comprised in the development is begun; or
 - (b) where the development consists of a material change in the use of any buildings or other land, before the change of use is begun.

MHCLG GUIDANCE - DETERMINING A PLANNING APPLICATION – ISSUED IN MARCH 2014 AND UPDATED IN APRIL 2026

Sets out process and expectations on planning performance and decision making.

Who in a local planning authority makes a planning decision?

[Section 101 of the Local Government Act 1972](#) allows the local planning authority to arrange for the discharge any of its functions by a committee, sub-committee, or an officer or by any other local authority. An exception where this power may not apply is where the local authority's own application for development could give rise to a conflict of interest, when [regulation 10 of the Town and Country Planning General Regulations 1992](#) applies.

The exercise of the power to delegate planning functions is generally a matter for individual local planning authorities, having regard to practical considerations including the need for efficient decision-taking and local transparency. It is in the public interest for the local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant planning issues are made quickly and that resources are appropriately concentrated on the applications of greatest significance to the local area.

Local planning authority delegation arrangements may include conditions or limitations as to the extent of the delegation, or the circumstances in which it may be exercised.

Paragraph: 015 Reference ID: 21b-015-20140306

Revision date: 06 03 2014

Who must the local planning authority notify once it has made a decision on a planning application?

The local planning authority must formally notify the applicant of their decision using a written decision notice. Under [article 33\(2\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) the local planning authority must also give notice of their decision to every person who has made a representation, or who is an owner of the land or a tenant of an agricultural holding on the land or an adjoining owner or occupier.

The local planning authority may take a flexible approach and make a judgement about whether additional publication of the decision is needed on a case by case basis, weighing up factors such as the level of public interest in the application and the cost of additional notification. It is particularly important that the local planning authority notifies the Environment Agency of any decision taken on a planning application where the Agency has objected on flood risk grounds.

In the case of any decision against the advice of HSE there is [guidance on notifying the Executive in advance of any decision being issued](#).

Paragraph: 019 Reference ID: 21b-019-20190315

Revision date: 15 03 2019 See [previous version](#)

What information must the local planning authority include on their written decision notices of planning applications to applicants?

The information that the local planning authority must provide on their decision notices is set out in [article 35 of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#). This includes the requirement, where planning permission is refused, to state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. While the local planning authority is no longer required to give reasons for approval on decision notices, it is important that the other paperwork that supports such decisions clearly shows how that decision has been reached.

The local planning authority must also include a notification to the applicant with the decision notice in the terms (or substantially in the terms) set out in [Schedule 5 to the Development Management Procedure Order](#) in the following cases:

- where planning permission is granted subject to conditions;
- where planning permission is refused;
- where the Secretary of State has given a direction restricting the grant of planning permission; and
- where the Secretary of State or a government department has expressed the view that permission should not be granted (either wholly or in part) or should be granted subject to conditions.

Paragraph: 020 Reference ID: 21b-020-20140306

Revision date: 06 03 2014

What is the decision date that the local planning authority should put on decision notices?

To ensure consistency in the preparation of statistics, the decision date to be inserted on decision notices by the local planning authority is taken as the date when notice of the decision is issued to the applicant. This includes cases where the decision has been taken by an officer or a planning committee.

Paragraph: 021 Reference ID: 21b-021-20140306

Revision date: 06 03 2014

EXERCISING DELEGATIONS – WHO IS THE DECISION MAKER? (reference Local Government Association)

It may seem obvious, but if a decision-maker is tasked with making a decision, then they should do so. The decision-maker should:

- exercise their discretion through taking into account all relevant matters
- ignore irrelevant matters
- apply their mind to the question by giving due weight to those matters
- come to an independent judgment by making the decision themselves

To do something other than these steps is to fetter one's discretion. As might be seen from that list of steps, it is an error that may occur in a number of ways. Discretion may also be fettered more obviously, where the decision-maker is simply accepting the view or judgment of another person, one who is not charged with making the decision, without further thought or applying any judgment of their own. For example, is the decision-maker not just having regard to the results of consultation or the officers' professional advice, but is simply complying with that view or advice without applying their own mind and looking at alternatives?

BEST PRACTICE IN OFFICER REPORT WRITING

The Planning Advisory Service (PAS) provides advice on the essentials – what should an officer report include?

The decision-making Planning Authority must give written notice of a planning application decision in accordance with DMPO. The legislation does not require this notice to include an officer report. However, in most cases, the Planning Authority will include a form of officer report as this is the easiest way to demonstrate that it has properly considered all the relevant material planning matters, met its statutory requirements, and has made a sound and defensible decision. As a minimum, the officer report will include the following information:

- Application reference;
- Applicant details;
- Proposal;
- Site address;
- Site description;
- Relevant planning history;
- Relevant policies;
- Site constraints;
- Public representations received (number of representations and summary of material issues raised);
- Consultation responses;
- Analysis of the issues and planning balance;
- Recommendation;
- Conditions/reasons for refusal; and
- Relevant informatives.

Best Practice

Each Council will have its own officer report format that is adapted to fit within the Council's own constitutional requirements, accessibility standards and stylistic preferences. However, as well as the essentials outlined above, PAS have outlined some best practice suggestions below based on a review of different officer reports written across the country and feedback from officers from within those councils.

- Consider the proposal with a logical argument and conclusion;
- Give a professional officer view;
- Site and development description;

- Relevant site history;
- Consultation responses;
- Explain further stages of consultation;
- Include a section of pre-applications;
- Give proper and proportionate consideration to all objections and support;
- Be clear when an opinion is from a statutory consultee;
- Summarise representations and consultee comments;
- Set out the hierarchy of policies;
- Mention all relevant policies;
- Don't write misleading comments;
- Don't forget human rights, financial considerations and Equality issues;
- Include plans, images, and photographs;
- Proposals that trigger an Environmental Impact Assessment (EIA); and
- Include a clear recommendation.

TENDRING DISTRICT COUNCIL'S CONSTITUTION

The Council is responsible for determining a Scheme of Delegated Powers, which is set out in Part 3 – Responsibility of Functions within its Constitution.

Schedule 2 of Part 3 provides for the Responsibility for Council (Non-Executive) Functions.

The discharge of the Town and Country Planning & Development Control functions (including the determination of planning applications), as non-executive functions have been delegated to the Planning Committee and included within the terms of reference (Part 3.15) with a subsequent delegation being ***“All planning (including all prior approval applications), enforcement, building control and conservation matters delegated to the Director (Planning & Community)”***.

The general matters/principles which underpin the Council's scheme of delegation in respect of non-executive functions are set out in Part 3.5 & 3.6. For the purposes of this Report, the relevant paragraphs are:

1. *The Council is responsible for determining the scheme of delegation for all non-executive functions.*
2. *Powers and duties of Non-Executive Committees are subject to the general instructions which contain the framework within which such delegations must be exercised as follows:-*
 - (a) *Performed on behalf of and in the name of the Council;*
 - (b) *Within their areas of responsibility and limits as set out in the Constitution subject to the action being within the Council's Budget and Policy Framework;*
 - (c) *Subject to the directions of the Council and of the Cabinet or Non-Executive Committee as appropriate;*
 - (d) *Subject to powers and duties reserved for confirmation by the Council;*
 - (e) *In accordance with the Council's Financial Procedure Rules and Procurement Procedure Rules;*
 - (f) *Delegate, as appropriate, matters to:*

- (i) a Sub-Committee or panel;
- (ii) to an Officer in consultation with the Chairman or Vice-Chairman of a Committee, Sub-Committee or panel, as appropriate; or
- (iii) an Officer.

*The delegation of powers to Officers is underpinned by the principle and culture of consultation and liaison with Members, as appropriate and the ability for Officers to refer matters to the relevant decision making body, where it is felt that this is appropriate due to the nature of an issue **in addition, to the legal obligations to record the decision in the required format.***

Any authority granted to the Chief Executive or a Corporate Director, unless otherwise indicated, may be exercised by an officer with appropriate qualifications authorised by a Corporate Director in writing for that purpose. The relevant Corporate Director will maintain a record of such authorisations, a central record of which will be kept by the Monitoring Officer and available for inspection.

PLANNING ENFORCEMENT – USE OF RETROSPECTIVE PLANNING APPLICATIONS

Can a local planning authority invite a retrospective planning application?

(Source: Government's Planning Practice Guidance - Enforcement and post-permission matters)

Responding to suspected breaches of planning control

Paragraph: 012

Reference ID: 17b-012-20140306 Revision date: 25 04 2024)

A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (section 73A of the Town and Country Planning Act 1990) without delay.

It is important to note that:

- *although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way;*
- *an enforcement notice may also be issued in relation to other elements of the development;*

Section 73A TCPA - Planning permission for development already carried out.

(1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out—

- (a) without planning permission;
- (b) in accordance with planning permission granted for a limited period; or
- (c) without complying with some condition subject to which planning permission was granted.

(3) Planning permission for such development may be granted so as to have effect from—

- (a) the date on which the development was carried out; or
- (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

FINANCE AND OTHER RESOURCE IMPLICATIONS

No notable implications – the changes in process described within this report have been delivered or are in the process of being delivered within existing budgets and staff resources. However, it should be noted that the investigation into the resident's complaint that has led to these changes took up a significant amount of Officer time, particularly that of the Monitoring Officer.

USE OF RESOURCES AND VALUE FOR MONEY

No notable implications – although the changes proposed may reduce the likelihood of future complaints or challenges in respect of the Council's decision-making processes by improving transparency and, in turn, may reduce the risk of resources having to be employed to deal with such complaints or challenges.

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;

By making the changes set out in this report and improving transparency, it should make the Council less vulnerable to complaints or challenges about the decision-making process for planning matters which can be resource intensive to address.

B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and

The changes set out in this report introduce better transparency around governance and decision-making processes in respect of planning and should reduce the risk of future complaints or challenges.

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.

By making the changes set out in this report and improving transparency, it should make the Council less vulnerable to complaints or challenges about the decision-making process for planning matters which can be resource intensive to address.

MILESTONES AND DELIVERY

As set out within the body of the report and action plan.

ASSOCIATED RISKS AND MITIGATION

The main risk to the Council relating to the matters raised in this report is the potential for third parties to continue to question, complaint about or challenge the way in which the Council

makes planning decisions and whether it is administering those decisions lawfully, in line with relevant legislation, regulations and the Council's own constitution – as demonstrated in by the receipt of complaints which have been investigated by the Monitoring Officer.

The measures that have or that are in the process of being implemented within the Planning Service off the back of the Monitoring Officer's findings in respect of that complaint will improve the transparency of these processes and should help reduce the risk of further complaints or challenges.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The changes set out in this report relate mainly to internal processes and the way in which documents are presented and decisions recorded. Other than engagement with relevant Officers involved in those processes, wider engagement has not been required.

EQUALITIES

No direct implications.

SOCIAL VALUE CONSIDERATIONS

No direct implications, but in improving the transparency of the decision-making process for planning decisions as set out in this report should help strengthen public confidence in the lawfulness and constitutional correctness of the process.

IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION

On 7th September 2026, the Secretary of State for Housing, Communities and Local Government announced in Parliament that a review of the Local Government Reorganisation programme was commencing and that the decision made in March 2026 for Greater Essex (and other areas) had been withdrawn in light of new legal advice. Following this announcement, local authorities received correspondence from the Minister of Housing, Communities and Local Government requesting that until this review has concluded, Councils cease work on implementing the decisions that have previously been announced. The timetable for completion of the review is unknown at this time.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050

No direct implications.

OTHER RELEVANT IMPLICATIONS

Crime and Disorder

No direct implications.

Health Inequalities

No direct implications.

Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	No direct implications.
Area or Ward affected	All.
ANY OTHER RELEVANT INFORMATION	
None.	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
In formal complaints submitted by a resident to the Council in May and June 2026 in respect of the handling of a retrospective planning application in the Tendring area, questions were raised over whether planning decisions were being made lawfully with accusations of maladministration. These questions came about when the complainant received a Stage 1 response from the Council's Head of Planning and Building Control, whose name and title were on the decision notice for the planning permission in question. When informed that it was appropriate for the Head of Planning and Building Control to respond to the complaint because they were not directly involved in the processing and determination of the application, the complainant questioned whether the decision and other planning decisions signed by the Head of Planning and Building Control were in fact lawful if that individual had not processed or determined the application. The complainant had also raised concerns about the appropriateness of the Council seeking to resolve a planning enforcement case through the invitation of a retrospective planning application and the transparency of the consideration and decision-making around that approach which, in turn, raised questions about whether the comments received as part of enforcement complaints should transfer over for consideration in the determination of such a retrospective application. In investigating these elements of the complaint, the Monitoring Officer carried out a thorough review of the legislative background, requirements of the constitution and the processes and procedures being applied within the Planning Service. The Monitoring Officer was able to conclude from the investigation that whilst no unlawful decisions or maladministration had been found, there were administrative errors to be addressed going forward and improvements that could be made that would ensure procedural correctness and better transparency of the decision-making process. <u>TEXT FROM MONITORING OFFICER'S INVESTIGATION REPORT</u> This report ("Report") deals with the investigation ("Investigation") of the Stage 1 Complaints, submitted by a member of the public ("the Complainant"), against Tendring District Council regarding the determination of a planning application for retrospective planning permission and

regarding the planning enforcement procedures followed in relation to retrospective planning applications.

The Chief Executive referred the complaints to Lisa Hastings, Corporate Director (Law & Governance) & Council's Monitoring Officer ("the Investigator") for investigation into those complaints regarding the maladministration of planning decisions and the processes being followed.

In addition, the Investigator was requested to give due consideration to the complaints identified by the Complainant as outstanding under the Corporate & Housing Complaints Policy.

This investigation report covers the different complaints related to determination of a planning application, the processes being applied, understanding of the delegated functions, responses received by the Complainant to the matters raised and compliance with the Council's Corporate & Housing Complaints Policy.

To ensure the subject matter of the complaints is fully addressed it has been necessary to set out the Council's Complaints Procedure (Appendix A), Relevant Legislation Case Law & Planning Guidance for Determining Planning Applications, Planning Enforcement and use of Retrospective Planning Applications (Appendix B), Tendring's Application of the Legal Framework (Appendix C) including findings and recommendations.

- (a) Officer Decisions on planning applications made under delegated powers are not being made by the Head of Planning and Building Control, unless he has specifically requested that he will do so, due to particular circumstances of a case.
- (b) Planning case officers prepare a Delegation Report for the Authorisation Officer with a recommendation, the **Delegation Report (Appendix D)** sets out the reasons for the recommendation and ultimately the decision. It is the Authorising Officer who is making the decision to grant or refuse planning permission.
- (c) The Delegated Report template follows best practice guidance on both essentials and best practice, the format used by the Council includes a statement at the end "authority for delegated decision", which appears standard wording and is not amended in each instance to provide the correct delegated power and details of additional delegations to the relevant Authorisation Officer.
- (d) The **Decision Notice (Appendix E)** is issued to satisfy Article 35 of the Development Management Procedure Order, whilst a statutory requirement and an important one, it simply confirms that Tendring District Council as Local Planning Authority grants planning permission in accordance with the application form, supporting documents and plans submitted, subject to the conditions. The reasons are not set out in the Decision Notice, as these are within the Officer Delegation Report. The issuing of a statutory notice can be in the name of the Head of Planning and Building Control, on behalf of the Local Planning Authority, being Tendring District Council. The Decision Notice does not state the Head of Planning and Building Control is the decision maker.

- (e) The wording used on the modern.gov system for publication of decisions relating to the determination of planning decisions produced through a weekly list referred to the Corporate Director (Planning & Community) although, the attachment provided a link to the planning portal with the correct information on which officer had authorised the decisions. The Planning Service were requested to correct the wording as a result of the Investigation.
- (f) The incorrect constitutional references found on the Council's Delegated Report and the publication of decisions, can compromise the credibility and reputational damage of the Council, but such administrative errors would not impact the legal validity of the decision. The Decision Maker was duly authorised and acted within the powers delegated to them.
- (g) Findings from the Investigation should be shared within Planning Services together with a recommendation to ensure their delegated decision authorisations are up to date and correctly referenced in their Delegated Reports.
- (h) Use of retrospective planning applications is a practice accepted and encouraged by legislation (Section 73A Town and Country Planning Act 1990) and national planning guidance, where the Local Planning Authority considers that an application is the appropriate way forward to regularise the situation. Further findings in relation to this case are referred to later.
- (i) Planning Enforcement Officers must ensure they are recording matters considered in accordance with the Council's Planning Service Enforcement Policy, adopted in July 2025. Documenting and communicating reasons for actions need to be improved and training is recommended.
- (j) It was acceptable for the Stage 1 response (14.05.26) to be undertaken by John Pateman-Gee, because he is not the Decision Maker in the determination of planning applications by delegated authorised officers. He is also the Head of Service covering planning enforcement. The Stage 1 letter is considered further below.
- (k) The Stage 1 letter dated 14th May 2026 did not cover whether the objections previously raised by the Complainant would have made a difference to the determination of the application, if they had been received as formal representations to the planning application. The Investigation has included this assessment within Section 5 of this Report.
- (l) There is no evidence of pre-determination, which established by case law, occurs at the point the decision maker is making their decision. The Local Planning Authority has the legal power to invite retrospective planning permission, and the practice is acceptable (in circumstances). National guidance states "*it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way*".
- (m) The Head of Planning and Building Control demonstrates that the Enforcement Team and the development control team are separate and do not share information, but it is equally easy to see why the Complainant would feel this way, especially if the legislation and

national planning practice guidance relating to retrospective planning applications has not been referred to.

- (n) The Stage 1 letter did not address a number of points with regards to enforcement activity and the use of retrospective planning applications. Reference is made in general terms but a more tailored response to the particular case would have been helpful. The Stage 1 response covers processes but did not provide reasons, such as how the Council's Planning Service Enforcement Policy had been applied in this case to reach the action of inviting a retrospective planning application.
- (o) Inviting a retrospective planning application is a lawful and standard part of the planning system. Whilst it can be perceived as unfair to complainants, provided the council follows proper procedures, considers objections, and applies planning policies consistently, it is encouraged to regularise breaches, where it is appropriate to do so. Complainants retain the right to object and participate in consultations, ensuring their concerns are addressed within the planning process. The Planning Service could produce a fact sheet for objectors/complainants/enquirers to communicate their rights, together with an explanation as to why inviting a retrospective planning application, is deemed the appropriate course of action.
- (p) Whilst it is not possible to determine if any the findings in this Investigation would meet the threshold of maladministration (determined by the Local Government and Social Care Ombudsman) there have been:
- delays in responding to the Complainant (including the production of this Investigation Report);
 - the Council's Corporate & Housing Complaints Policy has not been strictly complied with;
 - the Stage 1 letter dated 14th May 2026, lacked explanations and reasons applicable to this case, therefore leaving the Complainant feeling frustrated that his objections had been ignored and not taken into account;
 - general descriptions of processes and decision making could have been clearer to avoid unnecessary misunderstanding and give an impression of unlawfulness;
 - administrative errors have been found, which required rectification, but would not invalidate a decision;
 - training has been identified within the Planning Services Enforcement with more attention to recording reasons for actions and communication.
- (q) In response to the suggestion that the original decision to grant planning permission is void, the Investigation has considered the power provided by Section 97 of the Town and Country Planning Act 1990 ("the TCPA") which allows councils to revoke or modify a planning consent *"to such extent as they consider expedient"* with regard to the

development plan and any other material considerations. The Act does not define the test of expediency.

- (r) The Investigation has not found unlawful decision making or that the threshold in Section 97 TCPA has been met through other findings, however this does not undermine the findings and recommendations summarised above and detailed throughout the Report.

As part of next steps, the Investigator as the Council's Monitoring Officer will share the findings of this Report with Planning Services, ensuring that the improvements identified and recommended actions are understood through training. Those recommended actions are set out in the action plan (Appendix F) which cover the Investigator's points.

APPENDIX F - SCHEDULE OF ACTIONS ARISING FROM "TENDRING DISTRICT COUNCIL FINAL INVESTIGATION REPORT - MALADMINISTRATION OF PLANNING DECISIONS & PROCESSES FOLLOWED - COMPLAINTS CONCERNING DETERMINATION OF PLANNING APPLICATIONS (JULY 2026)" BY LISA HASTINGS, MONITORING OFFICER

<u>Action No.</u>	<u>Actions Required (shown in BOLD text below) (see sections 1.4 & 1.5 of the Investigation Report)</u>	<u>Pertinent Text from notes of the Officer Meeting held on Wednesday 5th August 2026 (if any apply)</u>	<u>Action Taken (and by whom)</u>	<u>Date Action Taken</u>
1.	"The Delegated Report <u>template</u> follows best practice guidance on both essentials and best practice, the format used by the Council includes a statement at the end "authority for delegated decision", which appears standard wording..." To be amended in each instance to provide the correct delegated power and details of additional delegations to the relevant Decision Making Officer.	The template document for "signing off" on a planning application et cetera decision should highlight more prominently the box for the "Authorising Officer" and that this, additionally, should be amended to "Decision Making Officer". The delegated authority box should be amended to the relevant Post Title (i.e. not name of officer) and the delegated powers text must be amended to include the correct Constitutional references for Non-Executive functions from Part 3 of the Constitution. The Decision Making Officer should demonstrate in the text box that they have read and	Appropriate wording for delegated powers text was provided to Planning by Joanne Fisher and implemented. Sharon Harwood-Bee and John Pateman-Gee have overseen changes to all templated and public facing access.	27/8/26

		understood the Case Officer's report and also record any changes that they have made during their consideration of the Case Officer's report and supporting documentation i.e. the Decision Maker must demonstrate that they "have owned" the final decision.		
2.	Consideration to be given to the title of the Delegation Report and 'Decision' documents uploaded to the Planning Portal.	Not discussed in the meeting but subsequent consideration of the public's understanding of the purpose of the documents uploaded to the Planning Portal.	This was a fix to the labelling in the Idox system for all future documents. Does not alter previous labelling. Planning team have adjusted.	1/09/2026
3.	The wording used on the modern.gov system for publication of decisions relating to the determination of planning decisions produced through a weekly list referred to the Corporate Director (Planning & Community) although, the attachment provided a link to the planning portal with the correct information on which officer had authorised the decisions. The incorrect constitutional references found on the Council's Delegated Report and the publication of decisions, can compromise the credibility and reputational damage of the Council, but such administrative errors would not impact the legal validity of the decision. The Decision Maker was duly authorised and acted within the powers delegated to them. The Planning Service were requested to correct the wording of the weekly determination of planning applications published through Modern.Gov as a result of the Investigation. Findings from the Investigation should be shared within Planning Services together with a recommendation to ensure their delegated decision authorisations	The delegated authority box should be amended to the relevant Post Title (i.e. not name of officer) and the delegated powers text must be amended to include the correct Constitutional references for Non-Executive functions from Part 3 of the Constitution. The list of decision making Planning Posts will be expanded on Modern.Gov to reflect the actual practice in Planning. It would be worthwhile arranging a training session for Planning Services to go "back to basics" on how planning decision making fits within the local government framework.	Appropriate wording for delegated powers text was provided to Planning by Joanne Fisher. List of decision making Planning posts expanded accordingly on Modern.Gov by Ian Ford, in consultation with Sharon Harwood-Bee.	27/8/26 Early August 2026

	are up to date and correctly referenced in their Delegated Reports.			
4.	Planning Enforcement Officers must ensure they are recording matters considered in accordance with the Council's Planning Service Enforcement Policy, adopted in July 2025. Documenting and communicating reasons for actions need to be improved and training is recommended, to ensure compliance with adopted Policy.	For planning enforcement purposes, need to explain in writing to both the complainant and the site owners / occupiers ("the parties") why it is accepted practice to invite / accept a retrospective planning application i.e. to seek a regularisation of the matter is a legitimate position for the LPA to take. To avoid a natural perception of the complainant that, in doing so, TDC is "helping" the site owners / occupiers the letters to the parties should contain a disclaimer that TDC is, in no way, pre-determining any subsequent retrospective application submitted – reiterate particularly to complainant that inviting an application is a proper course of action and that receipt of an application will, in fact, instigate a process for a much more thorough investigation of all aspects of the "development" and would be a better outcome for them than an enforcement investigation decision of "not expedient to pursue". It should be made clearer to the complainant that their complaint will remain anonymous (unless	The new Enforcement report was not in place when the complaint took place but was introduced as part of the ongoing improvement to the service around June / July. Since then, this has been updated and now includes pre determination disclaimers to any advice the officers provided. All letter templates for both Enforcement and Planning to ensure maximum awareness have been updated covering these points and include reference to potential retrospective applications being invited. This is also in the customer expectations document online but made clearer. Closure report is now referred to as the officer report (the same as planning) when written down but will take time for officers to adopt verbally. A new guidance note for customers has been produced and links will be in the neighbour letter and in email signatures. Wording circulated in response to requests to remain anonymous – putting onus on customers to ensure they tell us EVERY time they contact us. Web page being created, and current pages updated. DC Admin & Planning Services auto	End of Aug and Early September

		'waived') and that the details of that complaint will not be automatically carried over into the planning application determination process and that the complainant would therefore need to make fresh representations on the planning application (and that such representations would be placed into the public domain). Should point out to the complainant that the Case Officer for the planning application will be able to access the details of the enforcement investigation as part of their consideration of the planning application and consequent recommendation as to whether it should be approved / refused. The acknowledgement letter to application site neighbours should be amended to include standard text that points out that if the planning application in question is the result of enforcement action by the LPA then any related enforcement complaints will not be automatically carried over into the planning application process and that further representations should be submitted to the relevant LPA Case Officer. Enforcement letters and enforcement	responses to be updated with link and message about submitting comments.	
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		investigation reports should be reviewed / amended to reflect the above. “Closure Report” should be amended to “Investigation Report” as better terminology and to avoid public misperception. Training for Officers needed around use of language in letters / reports to minimize the chances of the text being misconstrued by complainant et cetera.		
5.	Inviting a retrospective planning application is a lawful and standard part of the planning system. Whilst it can be perceived as unfair to complainants, provided the council follows proper procedures, considers objections, and applies planning policies consistently, it is encouraged to regularise breaches, where it is appropriate to do so. Complainants retain the right to object and participate in consultations, ensuring their concerns are addressed within the planning process. The Planning Service could produce a fact sheet for objectors/complainants/enquirers to communicate their rights, together with an explanation as to why inviting a retrospective planning application, is deemed the appropriate course of action.		Further guidance is now online – see above.	End of August.
6.	The Investigator as the Council's Monitoring Officer will share the findings of this Report with Planning Services, ensuring that the improvements identified and recommended actions are understood through training.	Once the above amendments have been made to the documentation, training on the new decision making process should be carried out to explain why these changes have been made and their overall purpose. This training could be tied in with an initial introduction of the requirements of new	Discussion carried out informally and all documents/conclusions of investigation shared. Further training given by the Monitoring Officer being planned.	To be carried out in October 2026.

		national framework for planning decisions e.g. the need to record the determinations made by the “Nominated Member” and the “Nominated Officer” (with a further training session to follow on this); It is envisaged such training taking place within the first two weeks of September 2026. Training for Officers needed around use of language in enforcement related letters / reports to minimize the chances of the text being misconstrued by complainant et cetera. Ultimately, the Chief Executive will need to be informed of the review findings and of the resultant changes made to TDC planning practices. Suggest that NE Essex Councils’ Planning Directors hold a discussion to look to align practices going forward. Internal Audit invited to carry out a review of TDC Planning Enforcement section with as wide a remit as possible.		
7.	Stage 1 complaints should address all points raised by the Complainant, with reasons and explanations to prevent unnecessary Stage 2 complaints. Adhere to the requirements of the Corporate Complaints Policy.			Ongoing.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Not applicable – however it should be noted that a forthcoming decision for Full Council relates to proposed changes to the constitution to incorporate the requirements of new regulations introduced by the Government that will result in a standard national scheme of delegation for planning decisions. These will supersede the current constitutional arrangements and scheme of delegation from 31 October 2026.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None.

APPENDICES

None.

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