

Scrutiny Report



Listening Learning Leading

Report of Head of Planning

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Wards affected: All

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To: SCRUTINY COMMITTEE

Date: 26 November 2019

Review of planning enforcement performance 1 April 2018 to 30 September 2019

Recommendation(s)

That Councillors consider the content of the report and feedback any comments to the Cabinet Member for Planning.

Purpose of Report

1. To inform councillors of the current workload of the planning enforcement and compliance service and the legislative structure it works within.
2. To review the performance of the planning enforcement service over the last 18 months; 1 April 2018 – 30 September 2019.

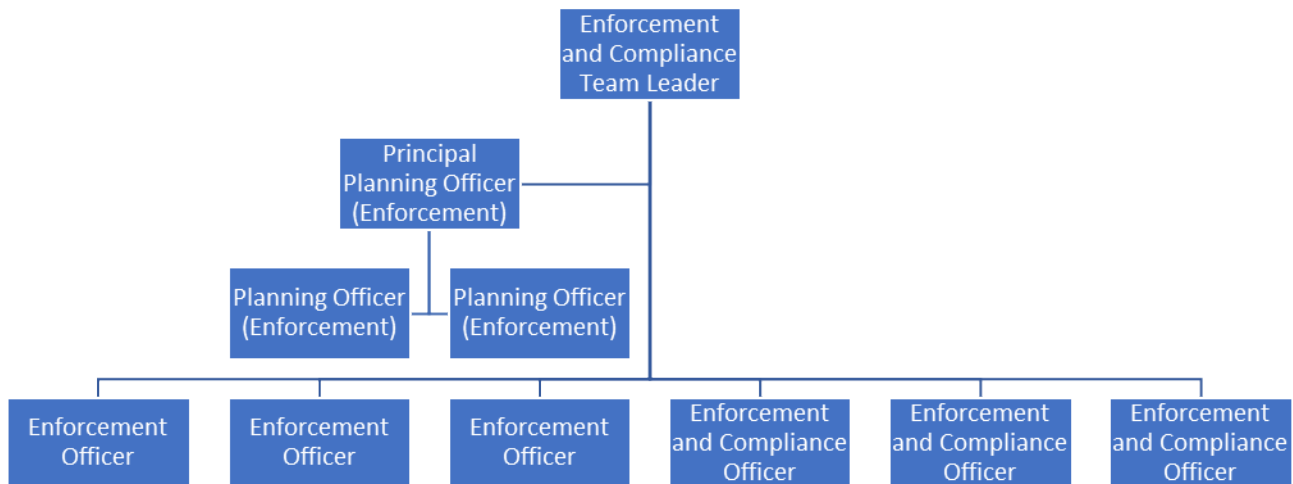
Corporate Objective

3. The Corporate Plan 2016-2020 has an objective; be tough on enforcement.
4. With regard to planning, to meet this objective; we will take a proactive approach to planning enforcement by:
 - Achieving an overall reduction in enforcement intervention through increased engagement with developers at all stages of the planning process.

- Offering support and guidance to applicants and developers throughout the planning process in order to mitigate breaches of planning control that might otherwise lead to enforcement action.

Background

- The enforcement team, within Development Management, comprises ten posts that provide a service for both South Oxfordshire and Vale of the White Horse District Councils. See structure below.



- The principal role of the team is to investigate breaches of planning control and remedy, if considered expedient, any harm identified. The team is not responsible for controlling or managing all activity taking place on land.
- The main functions of the service are to;
 - Ensure that unauthorised development is brought within the planning regulations or its impact is reduced, or if it is totally unacceptable, make sure it is removed or stopped.
 - Make sure that conditions and limitations attached to planning permissions are met or if appropriate, any changes are managed in accordance with the planning regulations.
- The service is limited in law to managing development under the terms set out in the Town & Country Planning Act 1990 (as amended), the Planning & Compensation Act 1991, the Planning & Compulsory Purchase Act 2004 and the Localism Act 2011.
- Decisions in relation to planning enforcement are made by taking into account the policy set out in paragraph 58 of the National Planning Policy Framework;

'58. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.'

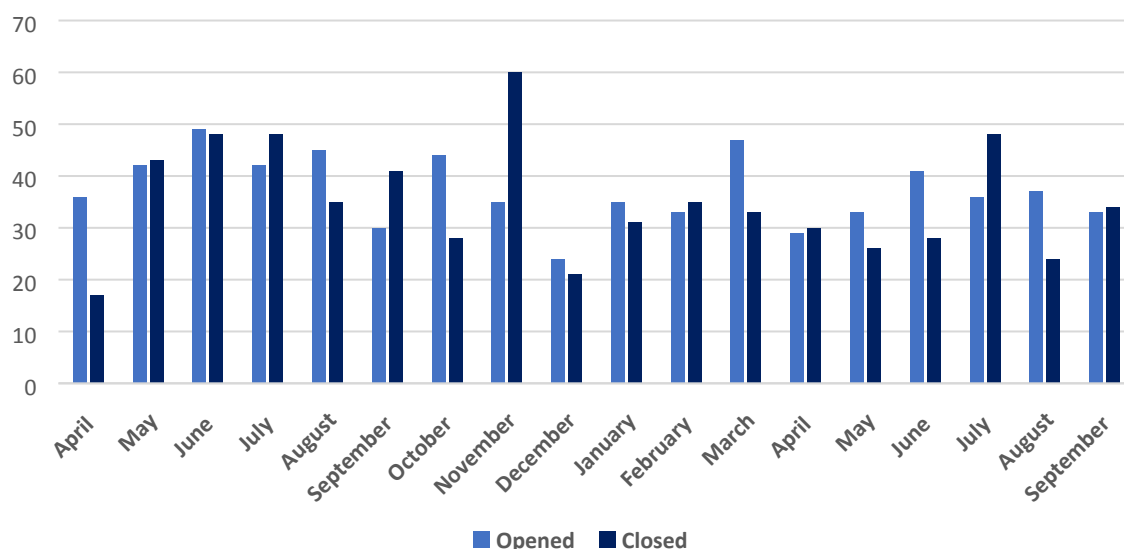
In addition, we must consider government guidance (PPG), the policies of the adopted Local Plan, including made neighbourhood plans, supplementary planning documents and where appropriate the Human Rights Act 1998.

10. Other than unauthorised works to listed buildings, protected trees and the unauthorised display of adverts, breaches of planning control are not criminal acts.
11. Officers do not 'police' the district. The focus of the service is to remedy planning harm and not to punish those that may not have obeyed the rules. Just because something is a breach of planning control is not in itself a reason to take formal action.
12. All investigations are carried out in the wider public interest. Officers do not carry out investigations on behalf of individuals, groups or organisations.
13. The team does not ordinarily investigate anonymous complaints, unless they relate to matters with the potential for immediate or irreversible public planning harm, e.g. alleged works to a listed building.
14. The planning enforcement service is set out in the Planning Enforcement Statement which is published on the council's website. This statement explains how we monitor the implementation of planning permissions and how we investigate alleged unauthorised development, it was last updated in 2016. Legislation and guidance have evolved, and the team are in the process of reviewing and updating this document, which is expected to be completed and considered by Cabinet before March 2020. If councillors have any comments on this statement, then please ensure the Cabinet Member for Planning is made aware, so they can be considered as part of the review.

Workload

15. The workload of the team is customer driven and each allegation undergoes a desktop triage assessment to ensure it is a planning matter.

Throughput 1 April 2018 - 30 September 2019



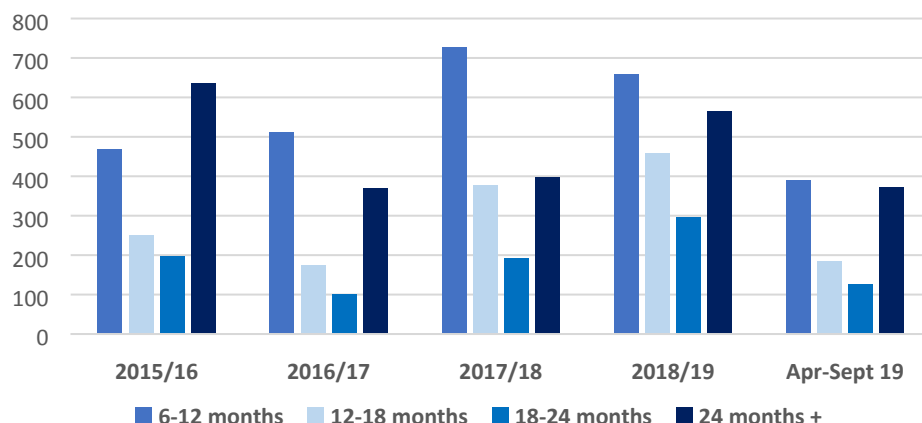
16. We currently have 568 enforcement cases under investigation, of which 328 are in the South Oxfordshire district.

17. The table below shows that up until April 2019 there has been a year on year increase in the number of enquiries received by the team. This is an average of 35 new cases per month but in the last full year the average was 39 cases. The last 6 months has seen a drop in the numbers received, this reflects the slowdown that the Planning Service has experienced in development across both districts.

Year ending	Cases received	Cases completed	Cases open
2019/20 (6 months)	209	190	328
2018/19	462	440	309
2017/18	435	395	288
2016/17	399	352	249
2015/16	379	431	206

18. The following table sets out the number of unresolved investigations that are still open and are over 6 months old. All cases remain open until the matter is fully resolved including if necessary full compliance with any notices served.

**Cases unresolved
over 6 months old by year**

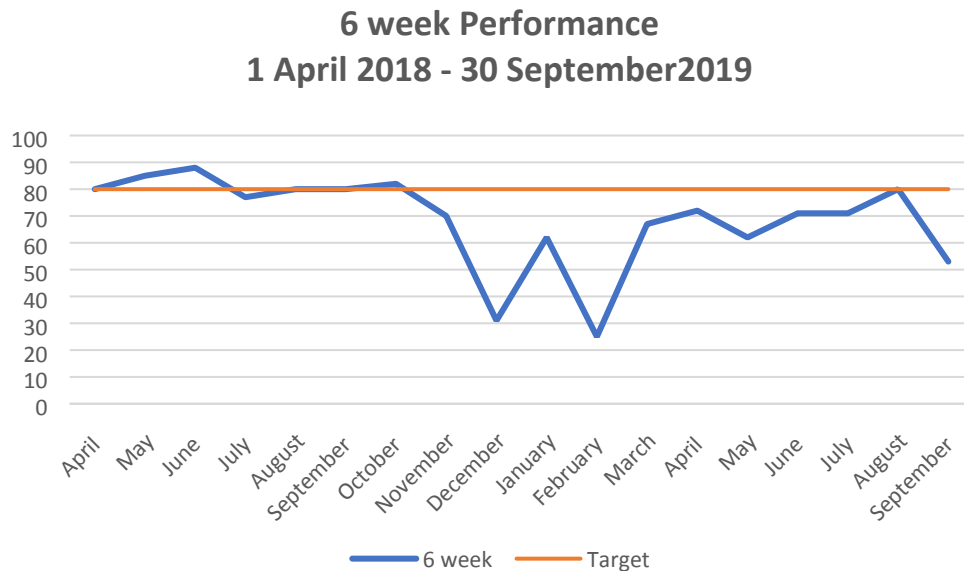


Formal action and appeals

19. Since April 2018 we have served 24 enforcement notices, two breach of condition notices, one Section 215 untidy land notice, two High Court Injunctions and have taken direct action to stop unauthorised access to land by vehicles in support of an injunction.
20. We have won all (four) enforcement appeals and received over £20,000 in cost award from the High Court injunction we won against the owner of the White Lion Crays Pond. This covered the cost of instructing solicitors and a barrister to represent the council in the High Court.

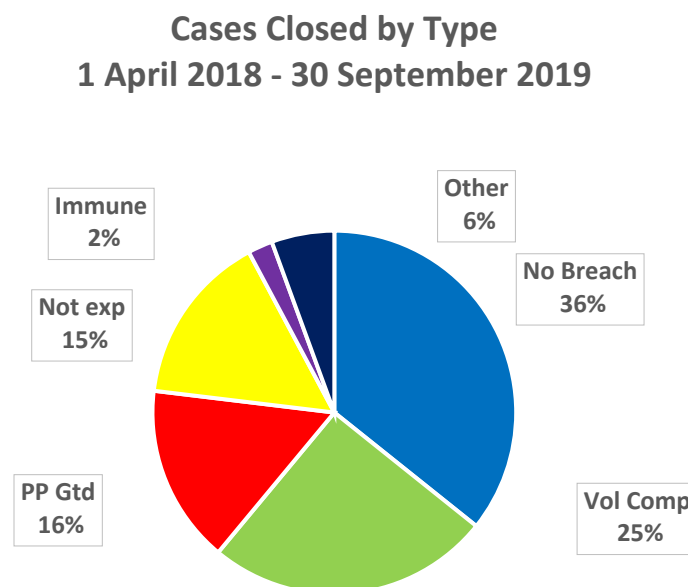
Performance

21. Planning enforcement targets are set locally. Unlike planning applications, the council is permitted to set targets that reflect the level of service it wants to deliver to communities, subject to the resources made available.
22. The enforcement service performance is measured against efficiency and effectiveness targets. The council's Corporate Plan sets two key objectives and the Planning Enforcement Statement sets out how work is prioritised and investigated.
23. Performance is currently reported in the Board Report and in a monthly Portfolio report submitted to the Cabinet Member for planning.
24. The teams current targets to reflect the Corporate objective are;
 - To investigate and determine a course of action for 80% of cases within 6 weeks from allocating the enquiry.
 - To increase the number of voluntary compliance cases by 3% using 2016/17 data as a base line



25. As can be seen in the graph above between April 2018 to September 2019 we have not consistently hit our efficiency target of deciding a course of action in 80% of cases within 6 weeks of being allocated. In December 2018 and February 2019 the drop in performance is consistent with the team being down to 50% capacity. The dip in performance in September 2019 relates to a number of the team taking annual leave during August.

26. Although the team undertake regular reviews to improve efficiency in working and seek to increase productivity, the efficiency target missed over this period is about team capacity.



27. The pie chart above shows that between April 2018 and September 2109, 280 cases (41%) were resolved either by the developer voluntarily complying with the planning legislation or by a grant of planning permission through a retrospective planning

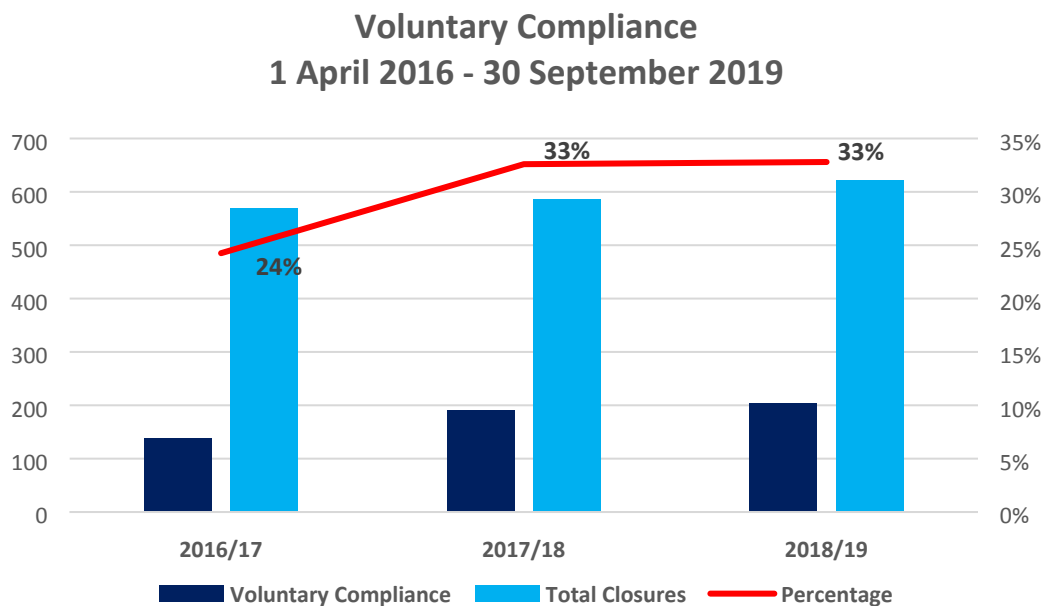
application. Also 104 cases (15%) were closed as not expedient because the technical breach identified was not considered harmful in planning terms.

28. 243 cases (36%) investigated were found not to be a breach of planning control. The majority of these were small scale householder issues such as fences, sheds and extensions. The more complex cases are usually the ones that result in formal action being taken. For example the unauthorised material change of use of the White Lion pub at Crays Pond to a private residence and the unauthorised material change of use of agricultural land in the Green Belt at Beckley into a motorcross track.

29. Where a breach is identified, in line with national policy, guidance and the development plan, we encourage developers to engage with the planning system and rectify the issues without the need to for the Council to take formal action.

30. The current corporate target requires the team to increase the amount of voluntary compliance by 3% per annum taking 2016/2017 data as the baseline.

31. We have succeeded in increasing compliance by 9%. This equates to 138 cases in 2016/17, 191 cases in 2017/18 and 204 cases in 2019/20. It is also a year on year increase in actual case numbers closed.



32. The work of the enforcement team is predominately reactive. Officers receive and process enquiries from residents, councillors, parish councils and other bodies. We process retrospective planning applications arising from our investigations, applications for certificates of lawfulness and all enforcement appeals including hearings and public inquiries. We also write and serve our own notices, act as witnesses at prosecutions and conduct interviews under caution when necessary.

33. Although we aim to be proactive in our work it has been limited over the last 18 months due to team capacity. However, we have been successful in securing High Court injunctions at short notice when required. Currently our proactive monitoring of major development is limited.

Work Programme

- 34. Work is on-going to forge better links with Oxfordshire County Council (OCC) highways department. OCC oversee highways works associated with large scale development and we are working together to become more efficient at managing the implementation of major sites which can cause widespread upset and disruption to communities if they are not closely monitored. They have in recent years been the subject of many complaints.
- 35. Currently the team are reviewing the Planning Enforcement Statement and aim to have a revised draft early in the new year for Cabinet to consider.
- 36. The team are also working on improving our standard planning conditions, which will include some training for colleagues. This is to ensure conditions imposed can meet the legislative tests including the enforceability of the condition.

Financial Implications

- 37. The planning enforcement service is provided and funded from within the existing Development Management budget
- 38. It is important to recognise the resources required and the timescales involved in dealing with planning enforcement matters. Typically, the more complex the case the longer it will take to resolve. For example, the successful formal action taken against the unauthorised material change of use of a public house into a single dwelling (White Lion, Crays Pond) involved a project team of enforcement officers, solicitors, a barrister and a process server. It took five years to complete the process from investigation, service of a notice, addressing the enforcement appeal, monitoring compliance with the notice, two prosecutions in the magistrates' court and then two hearings in the high court. We were awarded costs (£20,000) in our favour, but this did not cover the whole cost incurred by the council.

Legal Implications

- 39. There are no legal implications generated by this performance report.

Conclusion

- 40. Overall, over the last 18-month period, although the performance in determining a course of action within six weeks is 69% and thus below the target of 80%, this reflects the capacity of the team.
- 41. The increase in voluntary compliance has exceeded target three-fold, meaning that more people are engaging with the planning system. In addition, the team have taken formal action where deemed necessary and have successfully defended our decisions at appeal.
- 42. Completion of the work programme and increased proactive working is a focus, it is however subject to capacity, including the level of skills.
- 43. Any comments are welcomed for the Cabinet Member for planning to consider.