

Scrutiny Report

Report of Head of Planning

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Wards affected: All

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To: SCRUTINY

Date: 6 March 2023

Review: Planning Enforcement Statement

Recommendation

- (a) That Scrutiny Committee considers the latest progress report of the new approach to planning enforcement (as set out in the Planning Enforcement Statement 2021) and provide any comments to the Cabinet Member for Planning.

Purpose of report

1. To seek Scrutiny Committee's comments on the implementation of the new approach to managing planning enforcement work as set out in the Planning Enforcement Statement (December 2021).
2. To inform progress made in the last 12 months in reducing the on-hand enforcement case work to enable improvement in the performance of timely responses to investigations.

Corporate Objectives

3. The investigation and actions to mitigate planning harm supports the Corporate Plan, 2020 - 2024, themes of 'Providing the Homes People Need' and 'Building Healthy Communities'.

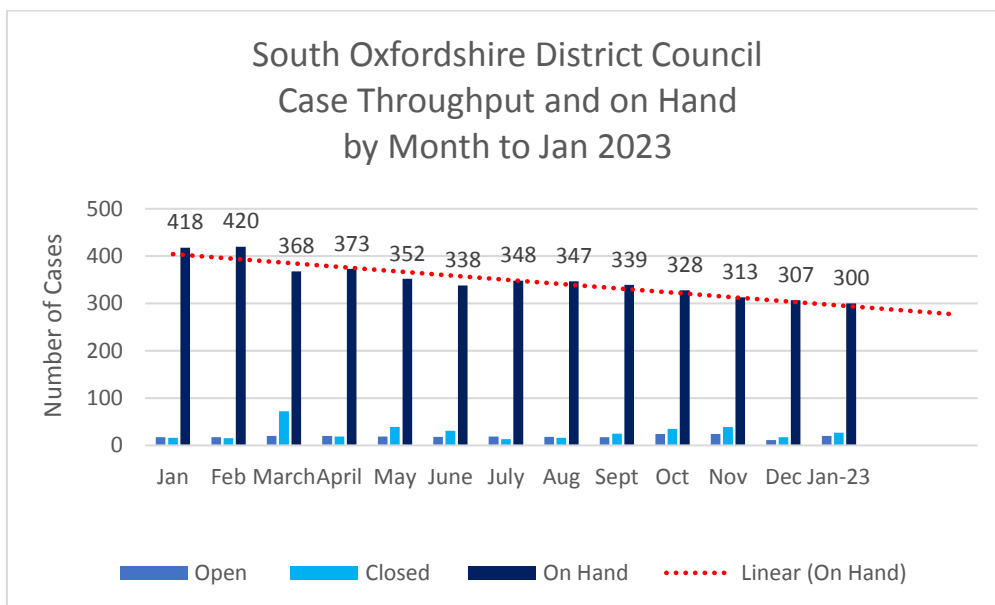
Background

4. A review of the enforcement team took place in 2021. There were fifteen operational improvements and one procedural update recommended. The procedural update was a review of the 2016 Planning Enforcement Statement and the introduction of a more formal triaging process. The review has enabled officers to improve transparency of decision making and efficiency in working, which has allowed greater focus on the issues with the potential to cause unacceptable planning harm.
5. The new Planning Enforcement Statement was agreed and adopted by both Cabinets in December 2021. Presentations and interactive sessions were conducted by officers in December 2021 and January 2022 for district, town and parish councillors and were all well attended.
6. Scrutiny Committee first considered the new approach to planning enforcement in November 2021 and resolved to request a six-monthly progress report, which was supported by Cabinet. This was presented to Scrutiny Committee in July 2022. At that time, the new working arrangements were operating well, and performance improvement was on track. It was recognised that improvements were dependant on resources being in place and effective.
7. This report presents a review of the new approach to working as set out in the Enforcement Statement and an assessment of performance up to the end of January 2023.

Managing caseload

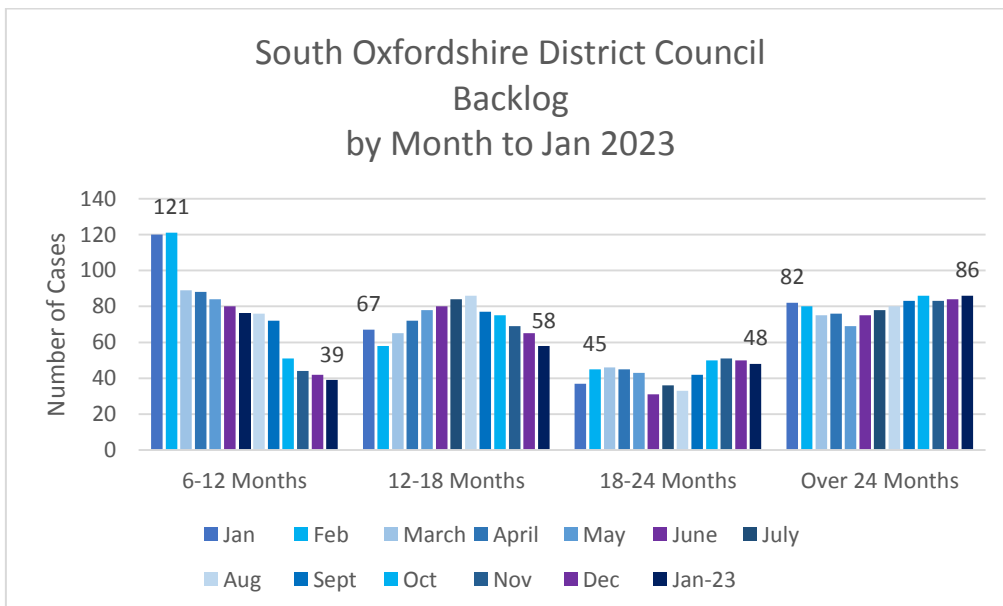
8. To assist improvement in timely responses for new investigations, our approach was to first improve the management of existing case throughput, by more regular reviews. Planning enforcement case throughput and on-hand monitoring for 2022- 23 is set out below in Graph 1.

Graph 1



9. With additional temporary resources, over the last 12 months the number of on-hand cases since the introduction of the new statement and triaging process has reduced to 300 cases. Maintaining this position or below is considered sustainable with the established resourcing. The council's position bucks the national trend (RTPI research paper; November 2022) where 89 per cent of respondents (a third of England councils) confirmed they were working with an unmanageable backlog of work.
10. During the year there have been challenges in team resilience and recruitment. Our experience is consistent with other councils as evidenced through the RTPI research paper where it states that over 72 per cent of respondents have had problems recruiting enforcement officers in the last five years.
11. We have recently been successful in our team recruitment, from elsewhere in the council. However to ensure the team is able to complete its work to continue to clear the backlog two officers have been seconded from the wider planning service. The aim is to clear the backlog of work by the end of March 2023.
12. Graph 1 shows that the reduction in case closures slowed during the summer, but improved from September which was mainly due to securing resources through recruitment to vacancies. However we currently have a fully resourced team and expect the on-hand trend to continue to fall.
13. A breakdown of the on-hand casework older than 6 months is set out in Graph 2.

Graph 2



14. The graph shows the significant drop in cases that are up to 12 months old. There is a mixed picture with older cases. The data illustrates the nature of casework which includes 'baked-in' delays in the process. Cases are required to remain open sometimes for long periods to ensure compliance with notices served, so that we can monitor compliance with actions we've specified to remedy a breach of planning control or compliance with conditions (e.g. relating to annual planting periods). Cases also remain open whilst we wait for planning applications to be determined and we currently

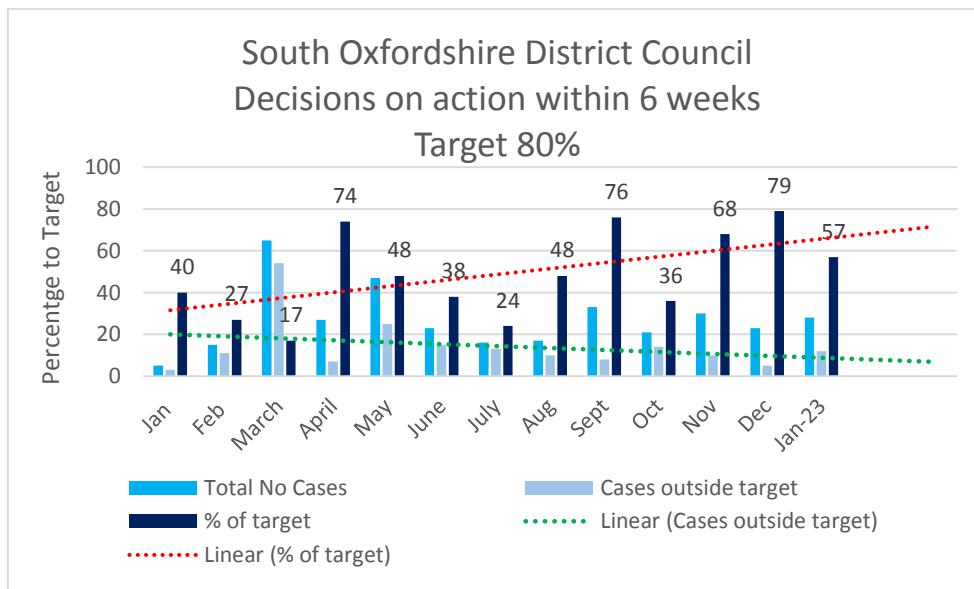
also have a number of cases that have been waiting over 12 months for appeals to be heard or for prosecution proceedings in the Courts.

15. These issues are part of the planning enforcement process and limited improvement can be undertaken, other than ensuring regular case reviews.

Performance

16. Since April we have monitored our efficiency target of deciding a course of action for 80 per cent of cases within six weeks of case allocation. The composite graph 3 below shows that we are making progress towards our target. We had expected to meet the target by the end of 2022, however due to a combination of resource challenges mentioned above and several new complex cases (e.g., gypsy and traveller investigations), this has not been possible. The drop in performance reflects the resource changes during the summer. However, with the on-hand case numbers expected to continue to fall, and with the wider use of the planning team resources, we expect to meet the target and sustain performance by the end of March 2023.

Graph 3



Customer feedback and triage review

17. As part of the revised Enforcement Statement (2021) we introduced the risk-based approach to rate the impact of a planning breach (harm assessment and scoring). In July 2022 we reviewed the feedback following the agreed changes. In the first six months we had 15 requests to review the investigation decision or to provide further clarification. Using this feedback, adjustments have been made to improve responses to customers and a fuller explanation of our decision is provided. Since this change, the requests for review have fallen to four across both councils.

18. Some customers and parish councils continue to ask why they are not provided with regular updates. We have set out our reasons in the Enforcement Statement but in addition we think it is helpful to give a more detailed explanation below.

19. When releasing information relating to planning matters, we recognise the need to protect personal data. For non-personal data we follow the Environmental Information Regulations 2004 (EIR) in considering what can be released and to evaluate if any exceptions apply for withholding information.
20. EIR regulation 12(5)(b), permits the refusal to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. This exception is subject to a public interest assessment.
21. It is important to note that as set out in the Enforcement Statement we notify those reporting suspected breaches of the outcome of our investigations
22. We recognise the strong interest in openness and transparency and consider this is met through promoting better public understanding of the planning enforcement processes (e.g., Enforcement Investigation Process page 12, Enforcement Statement). Although there is also an obvious personal interest raised by informants wanting details of specific investigations, we must consider the release of information fairly and equally.
23. An important factor against releasing progress reports during an investigation is that the council's ability to instigate a prosecution and/or take further action may be compromised. Thus, on balance and respecting expert advice, we consider there to be stronger arguments in favour of withholding the information during this stage
24. In arriving at this decision, we reviewed advice given by the Information Commissioner's Office (ICO), as the supervisory body for information access rights, and considered decisions made by the ICO for similar case.
25. During the year officers have also reviewed whether the triaging threshold (harm assessment) score is set at the right level to ensure it captures cases with the potential for the most planning harm. Officers consider the level is appropriate but will continue to monitor this process to ensure it continues to meet the objective: to capture cases with the potential for most planning harm.

Climate and ecological implications

26. In maintaining public confidence in the planning system (NPPF), the revised Planning Enforcement Statement helps ensure new development and relevant planning conditions support climate and biodiversity mitigation.

Financial implications

27. There are no financial implications resulting from this report.

Legal implications

28. Legal implications regarding information sharing are contained within the report.

Conclusion

29. Overall, the improved Planning Enforcement Statement is working well and achieving its objective, to capture cases with the potential for most planning harm and to improve transparency of decision making and efficiency in working.
30. The performance has been an improvement on previous recent years, both in reducing the on-hand case work and managing case throughput, but there is room to improve, particularly on performance of timely responses.
31. Resources has had an impact on the team and its ability to improve performance and SMT will continue to investigate how best to improve team resilience.
32. At this stage, there is nothing suggested to further improve or change the Statement as adopted.

Recommendation

33. That Scrutiny Committee considers the progress of the new approach to planning enforcement, as set out in the Planning Enforcement Statement 2021, and provide any comments to the Cabinet Member for Planning.

Appendix 1

Planning Enforcement Statement December 2021

Background papers

Further details from the RTPI research can be found using the URL below:

<https://www.rtpi.org.uk/media/13292/planning-enforcement-resourcing-report-final.pdf>