

ENVIRONMENT AND ECONOMY OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	Tuesday, 14 September 2021
Report Subject	Planning & Enforcement
Cabinet Member	Cabinet Member for Planning and Public Protection
Report Author	Chief Officer(Planning, Environment and Economy)
Type of Report	Operational

EXECUTIVE SUMMARY

This report provides an update to Members regarding the performance of the planning enforcement service and will demonstrate the new software system which the service will be implementing.

RECOMMENDATIONS

1	Members note the update and support the actions taken.
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REPORT DETAILS

1.00	EXPLAINING THE PERFORMANCE OF ENFORCEMENT SERVICE
1.01	<p>Introduction</p> <p>In February 2021 the Committee received a report clarifying the structure of the Planning Enforcement team and its position within the Planning, Environment and Economy (PE&E) portfolio. That report clarified the Planning Enforcement policy, how the team had been implementing that policy and their performance against Welsh Government indicators. The report also outlined the mitigating actions taken to address the implications of the pandemic on service delivery. At the February meeting the Committee noted the report and supported the further mitigating actions</p>

which it proposed. Committee requested that a further report be presented to it in nine months' time.

1.02 This update report has been brought forward by two months at the request of Members and seeks to provide an update on the performance of the planning enforcement service with particular regard to response times; the re-introduction of site visits; the use of Eden Planning Consultancy and mitigating actions to address the backlog of cases.

How performance of the Planning Enforcement team is measured

The performance of planning enforcement has been measured by Welsh Government since 2018 using two main indicators, firstly the number of cases investigated in less or more than 84 days and secondly, the number of cases where positive-action has been taken in less or more than 84 days.

Flintshire Council Enforcement Cases

The table below lists the number of enforcement cases, including those where positive enforcement action has been taken within each year and for quarter 1 of 2021/22.

Welsh Government provide the following definitions:

□ 'Investigated' means that the authority has considered the alleged breach of planning control and advised the complainant of the outcome of their investigation.

□ 'Positive Action' means that, following investigation, it is decided that a breach has occurred, and one of the following has also occurred:
 (a) informal negotiation removes the breach;
 (b) an Enforcement Notice is issued;
 (c) planning permission is subsequently granted through an application or enforcement appeal;
 (d) prosecution is brought (with the date the case is first heard deemed as the "positive action" date);
 (e) direct action by the authority removes the breach of control.

The date is measured from the date the complainant is notified that the case is expedient to take forward and to the case reaching one of points (a) to (e) above.

The performance statistics for the service since these indicators were introduced are as follows:

Year	2018/19	2019/20	2020/21	2021/22 Q1
Total number of cases investigated	159	248	220	86
Number of cases investigated In 84 days or less	98 62%	161 65%	118 54%	45 52%
Number of cases investigated In more than 84 days	61	87	102	41
Average time taken to investigate enforcement cases in days	78	131	194	169

Average time taken to take positive action in days (target is 84 days or less)	110	48	84	46
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The table above shows that since April 2019, throughout the pandemic the planning enforcement service has continued to meet the WG target of taking positive action within 84 days of receiving a complaint. This continues to be an improving position from 2018/19 onwards.

As reported in February, the position remains the same in relation to the substance of the complaints that are being recorded with approximately 70% of cases having no breach of planning regulation and approximately 15% of cases being very minor breaches for which it is not considered expedient to take enforcement action. This means that only 15% of complaints registered made form a breach of planning control.

Regardless of their substance or scale, each case, is recorded, acknowledged, digitised, given a priority status and allocated to an officer. An investigation is undertaken; an expediency report prepared; a discussion with a senior officer takes place and then the case is either authorised for no further action and closed; steps to regularise the breach identified; or to progressed to further action.

1.03

Response time and Communication Standards

It is clear from above that the planning enforcement service is meeting the performance levels expected by Welsh Government. With regard to more general communication such as emails, the Council’s Communication Standard sets out expected response times. The standard states that an email should be acknowledged within 5 working days and a full response as soon as possible but within 10 working days.

When Members received the report in February 2021 regarding Planning Enforcement an agreed action was the creation of a dedicated email address for the use of Cabinet Members and Group Leaders only. This email address was to be used when they, or their colleagues, had not received a response to their query within the prescribed 10 day response time. The email address has been in operation since the 15th March 2021 and since then has received three emails from two Councillors. The email will remain in place for use by Councillors if needed and its use monitored but over the six month period it has not been widely used.

1.04

Site Visits

As previously reported, site visits continued regarding the highest priority of planning enforcement complaints throughout lock-down. In the early stages of the pandemic these were carried out by the Service Manager. From July 2020 a robust risk assessment was put in place and site visits have been undertaken from that time onwards when national restrictions allowed. There are only a limited amount of visits which, if carried out, would have been in breach of Covid regulations which had to be postponed. Since the alert levels in Wales have reached zero the service has commenced un-notified site visits.

1.05

Use of a Planning Consultancy

	<p>The use of a planning consultancy, Eden, commenced on 30th June 2020. This was in response to the Development Management Service losing 70% of its capacity due to officer absence and availability, as was reported in February. The use of a planning consultancy was one of a series of mitigation measures put in place to prevent the Development Service reaching the highest level of escalation of risk and the service being forced to shut.</p> <p>The consultancy operates on an agreed fee schedule dedicating 4 hours of work to each case. The cost of the planning consultancy has been fully funded by Welsh Government's Hardship Fund. One of the reasons that this particular consultancy was used was that they had supported Flintshire previously with planning appeals and so they were familiar with our County, policies and, most importantly, willing to do the work they were appointed for. It is expected that the bulk of cases referred to the consultancy will be completed by the end of September 2021. An exit strategy for those cases which will not have been fully completed is planned.</p>														
1.06	<p>Backlogs</p> <p>At present both North and South Planning Enforcement officers have approximately 90 lives cases each. The planning consultancy have approximately 50 cases which they are still investigating. The position for the service is therefore largely recovered from the initial stages of the pandemic. At a recent Informal Cabinet it was agreed that a business case should be prepared for an additional full time permanent Planning Enforcement Officer. It is intended that if the business case is successful recruitment would commence immediately.</p>														
1.07	<p>Achievements since March 2021</p> <p>Number of Notices served below</p> <table data-bbox="319 1332 877 1814"> <tr> <td>S330s</td> <td>7</td> </tr> <tr> <td>Planning Contravention Notices</td> <td>12</td> </tr> <tr> <td>Enforcement Warning Notices</td> <td>13</td> </tr> <tr> <td>Enforcement Notices</td> <td>7</td> </tr> <tr> <td>Section 215s</td> <td>0</td> </tr> <tr> <td>Breach of Condition Notices</td> <td>2</td> </tr> <tr> <td>Cautions given</td> <td>2</td> </tr> </table> <p>Prosecutions</p> <ul data-bbox="367 1892 821 2072" style="list-style-type: none"> • Ffrith • Scotland Farm • Stryt Isa • Cheshire Tarmac – Spinney • Thomas Plant Hire 	S330s	7	Planning Contravention Notices	12	Enforcement Warning Notices	13	Enforcement Notices	7	Section 215s	0	Breach of Condition Notices	2	Cautions given	2
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	<ul style="list-style-type: none"> Groesffordd Bach <p>Appeals outcome</p> <ul style="list-style-type: none"> Ty Melin, Nercwys – removal of log cabin – notice amended and upheld – removal required in November 2021
1.08	<p>Demonstration software system – Agile</p> <p>Members will be aware that the Planning, Environment and Economy Portfolio have procured a new software system to provide better infrastructure to deliver a range of services.</p> <p>Development Management and Planning Enforcement is one of those services which will use the new software. There has been extensive collaboration with the software provider, Agile and Council staff and a number of significant achievements have already taken place with regard to the implementation of the necessary IT infrastructure to support the system and allow the portfolio to maximise the benefit of its use.</p> <p>Planning officers have sought to implement the enforcement element of Agile to maximise the amount of information which will be directly available and pushed out to Councillors and our customers. This, of course, must comply with regulations controlling how personal information is published and the necessary IT infrastructure needs to be in place to support such an exchange of information. The Chief Executive of Agile will demonstrate the software to the Committee so that they are able to see first-hand how the software will work.</p>
1.09	<p>Update on the further mitigation measures set out in February 2021 report</p> <p>The redeployment of staff from other services had begun to be wound down early in 2021 to allow those staff to move back into their service area which was re-opening more fully. No redeployment has occurred since March 2021.</p> <p>The additional role of the temporary planner has been extremely useful in progressing planning applications and has enable to planning enforcement officers to fully focus on managing their enforcement caseloads. The temporary roles ends on December 13th 2021.</p> <p>An appointment to the Senior Planner role was made in Summer of this year. An internal candidate was successful and has been promoted from a planner role within the North Team. Recruitment to the now vacant planner role has been agreed and will be undertaken shortly.</p> <p>An appointment to the vacant Assistant Planner role has been made and was appointed in late February 2021. The team have successfully and fully trained the Assistant Planner during the highest alert levels and a time of significant lock-down.</p>

2.00	RESOURCE IMPLICATIONS
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2.01	<p>Revenue: Informal Cabinet have agreed to fund the additional enforcement officer post.</p> <p>Capital: The capital for the purchase, implementation and future contract with Agile is in place.</p> <p>Human Resources: There will need to be a recruitment process to appoint the new enforcement officer.</p>

3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	<p>Key risks are mainly reputational damage to the Council due to a perception of planning enforcement failing.</p> <p>The mitigation of these risks are already in place due to Annual Performance Reporting regarding Planning Enforcement undertaken by Welsh Government for all Local Planning Authorities.</p>

4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	None

5.00	APPENDICES
5.01	None

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	N/A

7.00	CONTACT OFFICER DETAILS
7.01	<p>Contact Officer: Mandy Lewis – Development Service Manager Telephone: 01352 703248 E-mail: mandy.lewis@flintshire.gov.uk</p>

8.00	GLOSSARY OF TERMS
	<p>EWN: Enforcement Warning Notice is intended for use where the Council considers that an unauthorised development could potentially be made acceptable with control such as planning conditions.</p>

S215 Notice: is a section of the Town and Country Planning Act 1990 which enables a Local Planning Authority to serve a notice if it is considered that an area of land is in such a poor condition it has an adverse impact on the amenity of an area.

S330 Notice: is a section of the Town and Country Planning Act 1990 which enables a Local Planning Authority with the power to require information as to interests in land.

Planning Contravention Notice: enable the Local Planning Authority to require detailed information about the suspected breaches of planning control.

Enforcement Notice: enable the Local Planning Authority to require specific action to be taken to remedy a breach of planning control.