

Monday, 29 April 2024

**OVERVIEW AND SCRUTINY BOARD**

A meeting of **Overview and Scrutiny Board** will be held on

**Wednesday, 8 May 2024**

commencing at **5.30 pm**

The meeting will be held in the Banking Hall, Castle Circus entrance on the left corner of the Town Hall, Castle Circus, Torquay, TQ1 3DR

**Members of the Board**

Councillor Steve Darling (Chairman)

Councillor Brook  
Councillor Cowell  
Councillor Fellows  
Councillor Law

Councillor Long  
Councillor Strang  
Councillor Twelves (Vice-Chair)

---

**A Healthy, Happy and Prosperous Torbay**

---

Download this agenda via the free modern.gov app on your [iPad](#), [Android Device](#) or [Blackberry Playbook](#). For information relating to this meeting or to request a copy in another format or language please contact:

**Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) - [www.torbay.gov.uk](http://www.torbay.gov.uk)

# OVERVIEW AND SCRUTINY BOARD AGENDA

1. **Apologies**  
To receive apologies for absence, including notifications of any changes to the membership of the Board.
2. **Minutes** (Pages 4 - 9)  
To confirm as a correct record the minutes of the meeting of the Board held on 10 April 2024.
3. **Declarations of Interest**
  - a) To receive declarations of non pecuniary interests in respect of items on this agenda  
  
**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
  - b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda  
  
**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.  
  
**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent Items**  
To consider any other items that the Chairman decides are urgent.
5. **Annual Review of Key Performance Indicators for the Special Educational Needs and Disabilities (SEND) Local Area Strategy** (To Follow)  
To consider the submitted report on the above.  
  
(Note: Members of the Children and Young People's Overview and Scrutiny Board have been invited to attend this meeting.)
6. **Update on the Implementation of the Review of Planning Services Fit for the Future** (Pages 10 - 19)  
Update on the Implementation of the Review of Planning Services Fit for the Future, including:
  - Update on actions from LGA Review into Planning.
  - Accessibility and transparency around Section 106 and CIL.

- Planning Enforcement following a Councillor Call for Action approved by the Overview and Scrutiny Board on 13 March 2024.

**7. Review of Council Procurement Policies and Food and Music Festival** (Pages 20 - 25)

To approve the report of the above Panel and submit to the Cabinet 11 June 2024.

## **Minutes of the Overview and Scrutiny Board**

**10 April 2024**

**-: Present :-**

Councillor Steve Darling (Chairman)

Councillors Brook, Cowell, Fellows, Law, Long, Maddison, Strang and Twelves

(Also in attendance: Councillors Billings, Bye, Chris Lewis, David Thomas,  
Jacqueline Thomas, Tranter and Tyerman)

---

### **50. Apologies**

It was reported that, in accordance with the wishes of the Liberal Democrat Group, the membership of the Board had been amended to include Councillor Maddison in place of Councillor Joyce.

### **51. Minutes**

The minutes of the meeting of the Board held on 13 March 2024 were confirmed as a correct record and signed by the Chairman. It was noted that the briefing note on the transfer of land from TorVista Homes Ltd to Torbay Council would be circulated in due course.

### **52. Review of Investigation into Removal of the Palm Trees at the Italian Gardens, Torquay**

The Board reviewed the submitted report and responses to key lines of enquiry on the review of the investigation into the removal of the palm trees at the Italian Gardens in Torquay, following a Councillor Call for Action. The Devon Audit Partnership had collated all the emails relating to the palm trees and Italian Gardens which were then reviewed by the Director of Pride in Place, who had been requested to investigate the issue by the Chief Executive. The purpose of the review was to consider the circumstances that led to the actions to remove the palm trees and determine, if and how the actions were approved by the Council and to make recommendations on how controls could be improved.

The report acknowledged that there had been a corporate failure of proper control by officers between 2019 and 2023 which resulted in the trees being removed without further consultation and engagement and budget approval on the specific scheme by the Council. The report highlighted the actions that had subsequently been taken including clear project processes and audit trail for any works that are proposed outside the commissioned services, engagement with the relevant Cabinet Member on the annual work programme as well as a fundamental review of the Governance

and Commissioning arrangements for SWISCo which was the next item on the agenda for the Board to consider in detail.

The Board asked a number of follow up questions relating to the lack of detail contained within the report and responses to key lines of enquiry, including evidence of the emails reviewed and more detail of the actions taken; was any evidence gathered on the communications with the MP; what assurances could be made that this would not happen again; was there a detailed plan showing the layout, planting and costings; the appropriateness of the Director of Pride in Place undertaking the investigation; use of experts in designing flower displays; why there were less exempt (known as Part 2) reports being considered, and how did the Council function as a client.

The Chair of the Torquay Town Centre Partnership advised that the Community Partnership, Chair of the Greenspace Forum and Chair of the Parks Group were not consulted or engaged with in 2019 when the proposals were originally being planned. Limited consultation was provided at a later date. Ms Brandon sought reassurance regarding the experts consulted on the planting schemes and suggested the merit of ensuring that the people in the community who were consulted with included those who would share information to wider representatives to help spread the message further.

Members noted that the email evidence ran to over 200 pages and contained personal data of members of the public which could not be shared publicly.

The Board received further assurance from the Director of Pride in Place, Managing Director of SWISCo and the SWISCo Client Officer of the structural and process changes that had been implemented and the enhanced Client relationship from the Council's side.

Members acknowledged that the improved communication and engagement with Councillors and the community around the plans for the new Rifles Gardens demonstrated that improvements had been made. The Board determined that the measures put in place and the implementation of the recommendations arising from the Governance and Commissioning Review of SWISCo would help alleviate some of their concerns and put in place mechanisms to reduce the likelihood of the removal of trees without proper communication and governance happening again.

The Board wished its thanks to be passed on to the hard working staff of SWISCo on the ground who work in the parks and gardens and help make Torbay an attractive place live and visit.

Resolved (unanimously):

That the Director of Corporate Services be requested:

1. to consider best practice and implement a mechanism to ensure that Overview and Scrutiny receives adequate responses to requested information in a timely manner to assist them in preparing follow up questions for the meetings; and

2. to review the use of exempt information in Committee reports to ensure that Councillors are able to receive more information particularly, around financial information to enable them to make informed decisions based on all relevant information available.

### **53. Governance and Commissioning Review of Local Authority Company - SWISCo**

The Board considered the submitted report which provided details of the review of Governance and Commissioning for SWISCo (a Local Authority Company). The review had been carried out using CIPFA (Chartered Institute of Public Finance Accountants) best practice to ensure good governance and working relationships between Torbay Council as the Client and SWISCo. It was noted that an all Councillor briefing had taken place on 8 April 2024 to help raise awareness with Councillors. This was part of a planned cycle of reviews which would take place in years 2, 5 and 10. The report set out 12 recommendations including a proposal to extend the Commissioning Contract for a further five years from 1 April 2025 and changes to the Terms of Reference of the Shareholder Board and Shareholder Panel.

It was noted that the Board would receive the SWISCo Annual report each year around January/February with the Cabinet receiving it after the Board.

The Board asked a number of questions in relation to why risk was not included in the covering report; how was political engagement carried out with SWISCo; how social responsibility, supporting people with disabilities and care experienced people could be more positively shared; clarification on value for money, how was climate emergency and biodiversity being taken into account and how was SWISCo empowering communities to get involved.

Members acknowledged the improvements in communication and engagement with communities and the format of the Review Report which aligned with the Council's Community and Corporate Plan with key performance indicators on intended delivery outcomes. Members highlighted the improvement in performance since SWISCo came into operation and the investment made in new equipment and the delivery model. They supported the proposal to extend the Contract for a further five years.

The Board requested its thanks to be passed to the staff at SWISCo for their hard work and positive approach.

Resolved (unanimously):

That the Cabinet be recommended to approve the recommendations set out in the submitted report on the Governance and Commissioning Review of Local Authority Company – SWISCo subject to the following:

- 1 that the detailed Business Plan be included as part of the SWISCo Annual Report to Overview and Scrutiny;
2. to include as part of the Value for Money document, climate change and biodiversity to help demonstrate the ways that the Council considers Value for Money for SWISCo; and

3. to ensure that the risk element and typographical errors referred to are picked up in the final report to Cabinet.

#### **54. Council Business Plan 2023-2027**

The Board considered an early draft of the Council's Business Plan 2023-2027 which was the delivery plan for the Community and Corporate Plan, as part of its Policy Development Role to help shape the Plan. It was noted that the draft Business Plan had also been shared with Group Leaders via Council Leadership Group meetings. In developing the draft Business Plan the Cabinet had considered the recommendations arising from the Priorities and Resources Review but that four of the recommendations had not been included.

The Board raised issues in relation to the layout of the document; what more could be done to support community centres and play parks; inclusion of reference to Operation Town Centres and Operation Brighter Bay; work with Vision Zero; lack of detail within the document; limited reference to social housing and social rented housing and the housing crisis; the number of homeless people including an equal number of women and men; the Acorn Centre funding; the same projects being in the Plan from previous years and how performance would be measured.

Members noted a recent proposal for the Cabinet Members particularly engage with smaller groups of Councillors which would help them to inform the document further.

Resolved (unanimously):

That the Cabinet be requested to consider the following revisions to the draft Council Business Plan for 2023-2027:

1. to include within the narrative about the housing crisis;
2. to include the current numbers so that performance can be measured against them;
3. to amend the presentation style to include the milestones, actions and outcomes under each one for example Community and People – 'Ensure our town centres are safe and welcoming for all' as a heading and to list actions underneath, followed by milestones and then outcomes;
4. to include under Pride in Place - 'Protect and enhance our lived, built and natural environments, including a green spaces' milestones on how the Council is we going to deliver that including strategically enhancing the whole of Torbay by (1) Initiate Operation Brighter Bay, (2) tidier streets etc. (3) Implementation of Operation Town Centres;
5. to include how the Council reviews key performance indicators, for example grass verges (number 24 – deliver cleaner, tidier streets and attractive parks – this should include grass verges number of cuts for residential areas and

number of cuts for primary areas etc. and also to consider a Public Spaces Protection Order (PSPO) to cover parking on grass verges;

6. to reconsider how the following recommendations could be addressed within the draft Council Business Plan arising from the Revenue and Capital Budget 2024/2025 – Report of the Overview and Scrutiny Board following the Priorities and Resources Review:
  - “8. that a plan be developed to address how the Council and its partners can work with Torbay’s community centres, to help support them with their maintenance so that they don’t end up in crisis and this is brought back to the Overview and Scrutiny Board for consideration; and
  11. to ensure that the review of play parks secures their future sustainability and additional funding options be explored such as Olympic legacy funding, existing funding opportunities and grants which could help replace assets such as the Victoria Skatepark working in partnership with organisations such as Sport Torbay.”

#### **55. Overview and Scrutiny Annual Report 2023/2024**

The Board received the Overview and Scrutiny Annual Report for 2023/2024 which celebrated the work undertaken over the past year. It was noted that there was a small change required to the section on ‘Complementing the work of the Cabinet.’

Resolved (unanimously):

That the Overview and Scrutiny Annual Report for 2023/2024 be approved and submitted to the Adjourned Annual Council meeting on 16 May 2024 subject to the section on ‘Complementing the work of the Cabinet’ being reworded to read:

The Overview and Scrutiny Board continue to seek to complement the work of the Cabinet, with Quarterly Overview and Scrutiny Leadership meetings held between the Overview and Scrutiny Co-ordinator, Overview and Scrutiny Board Vice-Chairman, Group Leaders and Chairman of the Audit Committee to review work programmes and determine where Overview and Scrutiny can add value.

#### **56. Initial Overview and Scrutiny Work Programmes 2024/2025**

The Board received the Initial Overview and Scrutiny Work Programmes for the Overview and Scrutiny Board, Children and Young People’s Overview and Scrutiny Sub-Board and the Adult Social Care and Health Overview and Scrutiny Sub-Board for 2024/2025. The Democratic Services Team Leader highlighted some updates to the submitted documents which are detailed in the decision below:

Resolved (unanimously):

That, subject to the below additions, the initial Overview and Scrutiny Work Programmes for 2024/2025 be approved as set out in the submitted report, and kept under regular review by the Overview and Scrutiny Co-ordinator, Chairs of the two



Sub-Boards and the Democratic Services Team Leader with consultation being carried out with other Scrutiny Members via the monthly informal Overview and Scrutiny Briefings:

1. the inclusion of a report on the implications to Torbay's economy arising from the Plymouth and South Devon Freeport and to explore potential risks and benefits to Torbay being added to the main Board on 4 September 2024;
2. the inclusion of an update on green space management and SWISCo's work with the community on green spaces on the main Board on 5 June 2024;
3. the inclusion of Young Carers Strategy to the Children and Young People's Overview and Scrutiny Sub-Board on 29 July 2024;
4. Quarterly Budget Monitoring Reports to include Revenue Budget and Capital Budget monitoring together with financial and delivery details of the Capital Programme, instead of separate Capital Programme monitoring currently scheduled twice a year, with the option to request detailed consideration of specific Capital Projects as required or recommended via the Council Leadership Capital Projects Sub-Group; and
5. the SWISCo Annual Report to be scheduled to go to the main Overview and Scrutiny Board (and Cabinet) in January/February each year.

---

Chairman

**Meeting:** Overview and Scrutiny Board **Date:** 8<sup>th</sup> May 2024

**Wards affected:** All wards

**Report Title:** Update on Planning, Housing and Climate Emergency Service of the Future Project

**When does the decision need to be implemented?** Not applicable

**Cabinet Member Contact Details:** Cllr Chris Lewis, Cabinet Member for Place Development and Economic Growth [chris.lewis@torbay.gov.uk](mailto:chris.lewis@torbay.gov.uk)

**Officer Contact Details:** Alan Denby Director of Pride in Place [alan.denby@torbay.gov.uk](mailto:alan.denby@torbay.gov.uk)

---

## 1. Background

---

- 1.1 This report provides members with an update on the delivery of the Planning, Housing & Climate Emergency – Service of The Future Project and its impact thus far. For background following increasing concerns about performance the Chief Executive decided that there was the need to establish a formal project to make improvements in the service.
- 1.2 It is recognised that for the Council to effectively deliver the placemaking ambitions that are shared by the Council, partners and the community a high performing planning service is an integral part of the approach.
- 1.3 The Project Initiation Document (PID) was created with the first Project Board meeting occurring on 28 April 2022. The project focusing on strengthening the effectiveness of the overall planning service. The PID is appended as a link at the end of the report but in summary key objectives included implementation of the Planning Advisory Service's (PAS) action plan, structure and resources within spatial planning, business resilience and productivity and good delivery of key performance indicators (KPIs) across the service.
- 1.4 Due to the interdependencies across the service the entire department, encompassing: Development Management and its Planning Support Service; Strategy and Project Management; and Building Control, is included within the scope of the improvement work.
- 1.5 The project is supported by the Business Improvement and Change team, with key officers meeting monthly to review progress, assess performance and agree next steps.

## 2. Project Plan

---

- 2.1 The project has always recognised that to see a notable improvement in the performance indicators and improved customer feedback, a series of wider (enabling) activities needed to take place. An update on the key enabling strands was provided to Overview and Scrutiny in a report in September 2023.
- 2.2 The project has been making progress however in the early spring the project recommended to the Chief Executive that the project is extended to June 2024 to allow for a longer period to ensure that performance improvements are being sustained.
- 2.3 The planning service action plan has been adopted as the standard approach. The engagement of neighbourhood forums in pre applications has been more challenging of late with only two of the four forums operating. A joint agents forum and neighbourhood forum is to be arranged before the project concludes. This is intended to encourage early engagement with community representatives by agents and help identify issues with applications at the earliest stage.
- 2.4 Completed activities under the PAS action plan phase of work include improving the working relationship between development management and project management staff, previously TDA, member training, Planning Performance Agreements being resource and staff development.
- 2.5 In respect of planning applications the validation processes have been reviewed to improve the awareness of the validation list. This action is in concert with the increased focus on the agents forum as a mechanism to explain the way in which the planning service will work in the future.
- 2.6 Complaint processes have been reviewed and improved with the response to complaints now typically within 20 working days and a reduction in the number of complaints which are overdue a response.
- 2.7 Performance of the planning service is set out at section 3 below.

## 3. Performance and benefits of the Project

---

- 3.1 The September 2023 report noted that the sheer volume of shared learning that has taken place is one of the key benefits of the project. The increased focus on performance management is demonstrating that on the basis of the agreed KPIs the overall performance of the service is improving. There continues to be variability month to month but the overall trend particularly in development management is one of improvement. The project board acknowledges though that there are perceptions that the Planning Service is not improving that there is more to do to consolidate the improvements and engage with applicants and others to improve trust and confidence around development management and enforcement.

## 3.2 Performance - Building Control

---

3.2.1 The performance indicators used to monitor and measure the Building Control Service show that the service is performing very well and meeting its targets.

- Customer satisfaction has been maintained at 100% (satisfied or very satisfied). An electronic survey is sent out to all customers who use the services.
- Other KPIs include site visits and inspections and are on track at February 2024.
- Market share for the service as at February was reported as 87% an increase of 5% on that reported in September 2023.

## 3.3 Performance – Strategy and Project Management

---

3.3.1 The performance indicators used to monitor and measure the Strategy and Project Management Service are typically gathered on an annual basis and much of the data reported on is outside of the team's direct control. The KPIs for the team include;

- Net additional homes provided
- Number of affordable homes delivered
- Tonnes of CO2
- Total number of passenger journeys on Torbay's buses
- Number of concessionary bus journeys
- Number of public electric vehicle charging points on Council land

3.3.2 Measures of performance for the Strategic Planning area of work are more related to the status and validity of the Local Plan, evidence base, and support policy documents. This is recorded annually in the Authority Monitoring Report where progress against the key policies is noted as well as recording the development of any updates to the policy documents.

3.3.3 The Authority Monitoring Report will track housing numbers as a key driver, with teams in other areas of the Council tracking affordable housing outputs. The housing numbers are recorded annually and are a critical target when understanding the validity of the Local Plan.

## 3.4 Performance – Development Management and Planning Support

---

3.4.1 The performance indicators used by Government to monitor Development Management (last updated 2022) are measured by the proportion of applications that are dealt with within the statutory time, or an agreed extended period, with the quality of decisions made by local planning authorities measured by the proportion of decisions on applications that are subsequently overturned at appeal. Torbay continues to perform well within these government performance indicators.

3.4.2 Through the project however we monitor performance a wider set of KPIs, and we have set localised improvement targets. Since the September 2023 report to scrutiny there has been

sustained delivery at or above targets for minor and other applications approved including with extensions of time. Applications in these categories ignoring the extensions of time are typically seeing improved performance with the trend showing a better floor level of performance over the period but there continues to be variability monthly. This is one of the principal reasons for the extension of the project through to June.

3.4.3 The project board is reassured that the level of focus on performance and performance management is continued outside of the formal project board meetings and is being taken into team meetings, one to ones and where appropriate that individual members of staff are being supported in their development. The project board also acknowledges that there is considerable focus on the Council generally and specifically in respect of its role as a planning authority given the volume of regeneration work which is to be delivered with the community anxious to see this work underway.

3.5 Number of major applications determined

Since the September report there has been a reduction in the performance against the target of determination within the extension of time albeit with small numbers of applications.

3.6 Number of minor applications determined

Our baseline performance for minor applications, including with extensions of time was at 42.11%. Since the figures reported to Scrutiny in September (for June 2023) performance has continued consistently with the exception of September and October where 69 and 66% of applications were determined against a target of 70%. All other months have exceeded that target with November seeing 92% of applications determined within the extension of time. This is the highest level of performance reported. Since Christmas performance has been 81, 79 and 77 %.

3.7 Number of other applications determined

This area has the highest volume of applications and where baseline performance was ahead that of the other types of applications. For applications including extensions of time the baseline performance was 66.67%. Since the report to the September 2023 scrutiny performance has ranged between 68% and 92%, with the latest position being 73%. If we exclude extensions the baseline performance in May 2022 was 39.58%. Performance in this area has improved since September but it is not yet consistently meeting and exceeding the local target of 50% although with the exception of January and February 2024 where the performance was only slightly over 30% the general trend is positive with August and September achieving 59% and 65% respectively. Embedding this consistent performance is the expectation of the project board.

3.8 Enforcement cases

The number of Enforcement cases received continues to be significantly high, adding to the number of cases already open. Despite a focus on resolving cases the latest performance shows 589 open cases, this has increased since September 2023. The team reports that

there continues to be an increasing complexity of cases are being received. There is an improvement in the number of cases being closed with March 2024 seeing 32 cases closed, the highest since September 2023 and several notices issued. See also appendix 1 addressing several specific areas where comments have been invited.

### 3.9 Validation of applications

The validation of applications has been improving with each of, minor and other applications seeing a significant and sustained improvement since December 2023. Since December performance ranges from 71% to 100% with the project not previously reporting numbers higher than 74%.

## 4. Next Steps

---

- 4.1 The project board will continue to meet with the intention that the June 2024 meeting will receive a proposal from the project manager that the project can be closed, with the focus on performance and delivery becoming business as usual.
- 4.2 As at the project board meeting in April the highlight report set out that the overall status of the project is marked as Amber using the Red / Amber / Green assessment. The amber assessment is based on the project budget and programme being scored as amber. The project is overspent by £35,000 due to expenditure committed on two spends for technical systems which are required to improve the processing capability within the service namely upgrading the my service planning system and installing remote desktop status.
- 4.3 Assessed against the original project initiation document the improvement in resources in the team, performance improvement and overall level of risks is on track and therefore green.
- 4.4 Outstanding actions over the period through to the end of March include concluding staff consultation on technical service support, complete user acceptance testing on total land charges, develop a power BI dashboard allowing for better performance management, review department wellbeing questionnaire and integrating a Maps project. The key issue for acceptance of the project closure report will be the consolidation of the performance improvements that have been reported above and assurance over the direction of travel in respect of enforcement. In the interim work will also continue to bring together the Neighbourhood and Agents Forum meeting as reported above.

## 5. Recommendation(s) / Proposed Decision

---

- 5.1 That members note the report and make any recommendations they would wish Cabinet to consider in relation to the project.

## Background Documents

---

Planning Service Fit for the Future project - Project Initiation Document

<https://torbaycouncil1.sharepoint.com/:b:/s/TC->

[BIC\\_Service\\_of\\_the\\_Future/EQDvZe0jl8BOjdiXcXE3N3QBGEAgvN4p-Kp7mNRT0an-Bq?e=PZU51s](https://torbaycouncil1.sharepoint.com/:b:/s/TC-BIC_Service_of_the_Future/EQDvZe0jl8BOjdiXcXE3N3QBGEAgvN4p-Kp7mNRT0an-Bq?e=PZU51s)

PAS (Planning Advisory Service) 2021 report

[Planning Advisory Service Recommendations.docx](#)

Planning Service Improvement Plan 2021

[Planning, Housing & Climate Emergency Improvement Plan v3.01.docx](#)

## Appendix 1

---

As context, over the last four months the Planning Enforcement team have significantly evolved. The Service Fit for the Future [SFFTF] project clearly demonstrated the trend of rising cases without action being taken. There was a period of flux where capacity was largely taken up by investigating and communicating without the ability or resources to take direct action. This clearly needed to change.

With this in mind, a draft Enforcement Policy is being produced. This will set out the key objectives, how the service will be delivered, and be clear on priorities and expectations around communication. Enforcement cases have historically been generated by complaints from a range of customers in varying forms. Officers are launching a new complaints form to provide accuracy and reduce investigation time. Finally, Officers maintain an ongoing register of alleged breaches of planning control. This data has been thoroughly reviewed enabling scrutiny and monitoring. Before covering the three lines of enquiry it is worth considering that the integrity of the planning service depends on the Council taking effective enforcement action if required. We all need to be committed to providing an effective planning enforcement service. Public perception of the planning system can be undermined when unauthorised or unacceptable development is allowed to go ahead or remain without any attempt by us to intervene.

### **Key lines of enquiry:**

#### **Capacity**

*Are current targets for response and investigation of alleged breaches being met?*

In the majority of cases current timeframes set out in the existing enforcement policy for dealing with cases in the list of adopted priorities have not been met. This is due to a number of factors, including the process and numbers of cases being registered on a weekly basis, high caseloads being experienced by the existing team, the re-allocation of historic cases when chased, the extensive backlog of cases awaiting investigation/ further investigation and a shift in focus within the team by having to deal with historic backlog of cases which involves development, which is now at higher risk of becoming immune from further enforcement action due to the passage of time.

Initial response and investigations are set around established priorities. Given the potential implications around impact, scale and the range of new cases, the response and investigation times are swift.

Data shown within the SFFTF project show that the service has improved over the last four months. The number of cases received per month fluctuate between 10 and 23, however the number of Enforcement Notices issued has gone from 0 since May 2023 to 9 since December 2023. This is while the service has been dealing with some major cases and changing the way it operates through production of the new form and policy.

*Are two full time enforcement officers sufficient for the demands on the service?*



There are currently a Senior Planning Enforcement Officer and Planning Enforcement Officer in post, both are full time. There is a resource available within the Planning Support Team for some administration tasks.

There is a lack of capacity if the existing work practices were to continue. The new Enforcement Policy will be the basis on how the existing team will operate and set the parameters on what is required in the future. The team of Officers would have capacity to deal with a current, manageable caseload, however the significant backlog of cases continues to incrementally increase number of interactions with customers.

## **Culture**

*Does a lack of capacity create an incentive to not enforce on breaches of consent?*

Local Planning Authorities have a duty to investigate alleged breaches of planning control whereas the decision to take formal action is discretionary.

The current capacity does not incentivise the lack of action. The current backlog and expectations around communication are issues which are being addressed.

*How do we compare on Enforcement practices (notices, retrospective planning, etc.) to peer Local Authorities?*

The Planning Enforcement Teams practices clearly align with other Authorities, but it is hard to compare with other local planning authorities, as a Unitary we have a wider remit. The principles, processes and procedures are set out in legislation. Our new Enforcement Policy will make these points clearly.

*How can officers be supported in making complex Enforcement decisions? To support them, is specialist consultation and ongoing training (Drainage and Conservation as two examples) being encouraged?*

The Development Management Team have established a culture of learning. The Planning Enforcement Team have regular training and work collaboratively with colleagues from several internal and external departments/bodies, as and when required. Where support is required it is sought as investigations can be required through a multi-agency approach.

In the example where specialist advice is required, the enforcement team would consult with the relevant internal and/ or external bodies prior to a conclusion being reached.

*In the case of discrepancies, should a more objective rather than subjective assessment be the basis for enforcement decisions?*

In accordance with government guidance, all investigations into alleged breaches of planning control are undertaken in an objective manner (i.e. based on the facts of the case as they are presented or obtained via the investigation process). The legislation makes no provision for investigations to be undertaken in a subjective manner (i.e. based on emotional opinion or feelings). Where discrepancies are found (i.e. where the investigation that either the Council has erred in law during the decision-making process or the landowner has failed to follow the correct process), it is not the role of the investigating Officer to omit or rectify these discrepancies and/ or ignore due process. The conclusion of the investigation will be based on the facts as they are presented.

That said, as with all planning related matters, there is an element of subjectivity that runs through the investigation process when it comes to the interpretation of planning law, guidance and policy.

In such instances it is for the investigating Officer to pursue all avenues of investigation prior to reaching a conclusion. Checks and balances exist within the team to ensure that conclusions reached are as sound as possible.

## **Transparency**

*How can greater transparency be built into the system?*

Corporate transparency is established through the SFFTF project. An annual enforcement progress report could be published annually to provide further transparency.

See comments below.

*Should details of an inspection be publicly available to reassure those raising concerns?*

Confidentiality is a key component of Planning Enforcement. Although data can be shared, any communication or information sharing needs to follow established protocol.

Planning enforcement relates primarily to land, and it may not be immediately obvious that personal data (and therefore the GDPR) is involved. However, personal data is any information that identifies individuals directly or makes them indirectly identifiable in combination with other information. A person's name associated with a matter at a particular address constitutes personal data. As such, enforcement notices and the enforcement register include third parties' personal data and therefore require a lawful basis for processing. In line with almost every other part of the work of a planning department, the legal basis is likely to be public task. Planning enforcement can become a very contested arena with allegation and counter-allegation sometimes followed up with Freedom Of Information/ Environmental Regulation Information Regulation and Subject Access Request requests.

Allegations of breaches against a particular property or person should not be made public without any investigation, and perhaps only on completion of the investigation.

**Review of Council Procurement Policies and Food and Music Festival – Report of the Overview and Scrutiny Board – Draft Report**

**Report to Cabinet on 11 June 2024**

**Background**

1. The Review of Council Procurement Policies and Food and Music Festival Task and Finish Group met on 3 April 2024 to consider changes to the Council's Procurement Policies following the Devon Audit Partnership Review of the Food and Music Festival.
2. The Review Panel comprised Councillors Amil, Brook, Carter, Harvey, Long and Twelves (and was Chaired by Councillor Long).

(Note: Councillor Brook declared a non-pecuniary interest as a member of the English Riviera Business Improvement District (ERBID) Board and the person who submitted the tender for the Food Festival on their behalf.)

3. The background papers for the Review and the recording of the meeting can be found at <https://www.torbay.gov.uk/DemocraticServices/ieListDocuments.aspx?CId=1956&MIId=26151&Ver=4>
4. Key evidence considered by the Panel included:
  - Report of Council Procurement Policies – Food and Music Festival
  - Revised Contract Procedures

## 5. Key Findings

- 5.1 Weakness in the due diligence and contract management were identified by the Devon Audit Partnership in relation to the contract award to Case Live Limited for the provision of a Food and Music Festival in May 2023. This came at a time when the Head of Commercial Services was already reviewing policies and processes to align with new Legislation which was expected to be in force for April 2024, but was now due to be in place in October 2024. Some of the changes were in respect of transparency around decision making and contracts and ensuring that small and medium enterprises (SMEs), including local businesses were not disadvantaged by the process.
- 5.2 Members heard evidence from Councillor Brook on his experience in submitting a bid for the original Food Festival and the complexities of the tender documents and errors made in the application process which resulted in the ERBID not being evaluated and thus not successful. The ERBID Board decided not to retender and then heard that Case Live Limited had been successfully awarded a revised contract with a different type of festival to that to that originally proposed with additional 2 years seed funding at £80,000 extra. The ERBID were unable to support Case Live Limited as the new date did not fit in with their events programme and extending season.
- 5.3 Many of the recommendations arising from the Review had been implemented and new Contracts Procedures were approved by the Council on 22 February 2024 and the changes were being rolled out as part of the transforming procurement programme. The further changes would be developed between now and October with fine tuning between October and December 2024. Secondary Legislation was being proposed and would be incorporated once it was introduced.
- 5.4 Due diligence around procurement waivers had been strengthened since June 2023 and they were now checked by the Commercial Services Team looking at risks to the Council in more detail as well as the reasons for the waiver, which were then considered weekly by the Section 151 Officer before they were sent to the budget holder for decision if they were going to award the contract. Having a central point of contact through the Section 151 Officer makes the decisions on waivers more consistent. The Section 151 Officer advised that high numbers of waivers had been received in the past and that he had refused a number of these, particularly when they were further waivers for contracts. The number of waivers was reducing as a result of the new process. Members were assured that the change from the original Food

Festival to the Food and Music Festival with a change in date and funding levels would have been challenged by this process and alternative options would have been proposed. Further work was required to ensure that the Contract Procedures aligned with this new waiver process. It was noted that Councillors were not involved in the waiver process as this related to how we award the contract and not the actual decision to award the contract.

5.5 It was proposed to implement a new financial checks process based on a toolkit from the Cabinet Office taking into account proportionality depending on the amount and the risk of the contract so as not to put small or new suppliers at a disadvantage. These checks include looking at both Dunn and Bradstreet and Companies House records for the preferred supplier and their Directors (as appropriate) in relation to the preferred supplier pre contract award and will be further developed in line with upcoming legislative changes. A new risk tool was also being developed, also based on a Cabinet Office contract risk tool. to use at pre-procurement stage to determine what checks need to be built into the process taking into account supplier market and ability to reprocure etc. This would then be reviewed again once a potential supplier had been identified to determine how the contract would be managed. Annual financial checks would be carried out on contracts with an additional flag for major contracts so that the Council was notified straight away of any issues.

5.6 There had been a restructure within the Commercial Services which had resulted in the creation of a number of new posts to improve procurement and contract management oversight:

- Deputy Head of Commercial Services – responsible for managing the procurement and contract management function to ensure team resources were allocated appropriately and providing advice and guidance across the team and wider Council in relation to the application of public contracts legislation and case law, would be in post June 2024.
- Policy and Compliance Manager – responsible for ensuring the appropriate policies, procedures, guidance and training tools were in place to support effective procurement and contract management, would be in post May 2024.
- Commercial Business Partner – responsible for working across directorates to ensure we were able to develop a robust procurement pipeline and that we understand and can respond to individual directorates training and support needs, would be in post April 2024.

- Data and Compliance – responsible for monitoring and reporting on compliance with Contract Procedures and contract compliance, in post from December 2023.

5.7 The Deputy Head of Commercial Services, Policy and Compliance Manager and Commercial Business Partner will work with the Head of Commercial Services to implement the new contract procedures and requirements of the Procurement Act 2023 and it was anticipated that all of the posts would be filled by June 2024 and that they would be up and running fully as soon as possible after June.

5.8 Members welcomed the following aspirations, that the revised Contract Procedures would provide a framework, underpinned by policy and guidance, which would deliver the following, but questioned how delivery against this would be monitored:

- Creating a simpler and more flexible commercial system that better meets the Council's needs and enables the Council to meet its obligations under the existing and future regulatory framework for public procurement;
- Providing a simpler, more transparent and flexible approach to spending money that is based on what we are buying, the associated risks and optimal route to achieving best value from our spend.
- Opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. Creating greater opportunities for local businesses, small and medium enterprises and the voluntary and community sector to do business with the Council. The range of procurement options within the proposed £25,001 to regulated threshold will allow us to direct opportunities for higher value contracts to pre-selected local suppliers, which under the current system would have to go to the open market.
- Improving levels of transparency on all aspects of decision making in relation to the award of contracts – not just the decision on who we award the contract to, but also around the decision to purchase externally and the route to market chosen. Enabling how we spend public money to be properly scrutinised and for the Council to be held to account.
- Improving our decision making, procurement and contract management practices to ensure we deliver best value and best outcomes for our residents;
- Delivering consistent (but not uniform) capability which promotes innovation and community partnership;

- Enabling tougher action to be taken on underperforming suppliers and exclusion of suppliers who pose unacceptable risks, through more effective contract management and the use of mechanisms being put in place by government for this purpose; and
- Revised spend thresholds will enable staff (once trained) to put lower value / lower risk contracts in place without the need for hands-on procurement officer support, this will allow the Commercial Services Team to focus resources on the higher value / more complex contracts.
- Making the way in which we spend money “everyone’s business”.

5.9 The Head of Commercial Services was working with the Section 151 Officer to include targets within the Business Plan to monitor spend, how much was spent locally and ensuring the Council received best value.

5.10 The Council was engaging with local small and medium enterprises (SMEs) as part of a Devon and Cornwall Procurement Partnership, which holds an annual supplier event to meet with local suppliers part of this covers the E-Tendering Portal and options for contracts. The Commercial Services Team was also part of a Community Wealth Building Sub-Group working with the voluntary and community sector and the Economic Regeneration Team. Part of implementing the new Legislation would be further engaging with potential suppliers on the development of new procurement documents. The Commercial Services Team has already worked with local suppliers through workshops on the new contract documents and was working with the Economic Development Team who have developed a tool for local businesses to complete and an online questionnaire.

5.11 The TDA transferred to Torbay Council on 1 April 2024 and contracts which were completed on behalf of the Council would remain unchanged, but a review was being undertaken to novate (transfer) the contracts awarded under TDA to the Council. This would mean that they were monitored in accordance with Torbay Council’s Contract Procedures.

## **6. Conclusion**

6.1 The Panel reflected and debated the information provided to them, both verbal and written. Members were satisfied that the lessons learned from the Review of the Food and Music Festival and the implementation of the recommendations arising from that review, some of which had already been implemented and others that would be incorporate with the requirements of the new Legislation, would prevent the likelihood of a repeat of the issues



found. They welcomed the work with small local businesses and ensuring that the Council does all it can to support Community Wealth Building to ensure that as much spend as possible is kept within Torbay, as well as the risk based and flexible approach adopted.

- 6.2 The Panel formed the following recommendations to the Cabinet which were approved by the Overview and Scrutiny Board on 8 May 2024. **On being put to the vote, the motion was declared carried unanimously.**

## **7. Recommendations**

### **Recommendations to Cabinet:**

- 7.1 That the Cabinet be recommended:

- a. to clarify how the monitoring of the new Contract Procedures will be tracked in order to demonstrate how many local businesses have been awarded contracts as well as the overall implementation of the new arrangements (highlighted in paragraph 5.8 above); and
- b. to continue to support Community Wealth Building and work with small and medium local businesses to enable them to influence the Contract Procedures and to successfully apply for contracts.

### **Recommendations to Overview and Scrutiny Board:**

- 7.2 that the revised Procurement Policies be presented to the main Overview and Scrutiny Board prior to their approval; and
- 7.3 that an update be given to all Councillors on the changes to Procurement once the new Legislation is in place.