

**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

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## 1. Background

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- 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

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- 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

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- 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

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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

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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

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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

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- 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

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

## Background Documents

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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

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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.