

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Democratic Services
committee.services@tmbc.gov.uk

28 September 2022

To: MEMBERS OF THE OVERVIEW AND SCRUTINY COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Overview and Scrutiny Committee to be held in the Council Chamber, Gibson Drive, Kings Hill on Thursday, 6th October, 2022 commencing at 7.30 pm.

Members of the Committee are required to attend in person. Other Members may attend in person or participate online via MS Teams.

Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

1. Guidance on the Conduct of Meetings

5 - 6

PART 1 - PUBLIC

2. Apologies for absence
3. Notification of Substitute Members 7 - 8
4. Declarations of interest 9 - 10

Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting.

5. Minutes 11 - 14

To confirm as a correct record the Minutes of the meeting of the Overview and Scrutiny Committee held on 7 July 2021.

6. Any Executive Decisions which have been 'called in' 15 - 16

Matters for Recommendation to the Cabinet

7. Planning Enforcement Review 17 - 46

Following a review of enforcement, a revised version of the Enforcement Plan was presented for consideration.

(Note: Annex 3 is restricted as it contains confidential information related to salaries)

Matters for Information

8. Local Government and Social Care Ombudsman Annual Review Letter 47 - 56

To set out the annual report of the Ombudsman regarding complaints received and dealt with over the period 1 April 2021 to 31 March 2022.

9. Record of Executive Decisions taken 57 - 62

A record of the decisions taken by the Cabinet and Cabinet Members (the Executive) in July, August and September 2022.

10. Work Programme 2022-23 63 - 64

The Work Programme setting out matters to be scrutinised during 2022/23 is attached for information. Members can suggest future items by liaising with the Chair of the Committee.

11. Urgent Items 65 - 66

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

Matters for consideration in Private

12. Exclusion of Press and Public 67 - 68

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

13. Urgent Items 69 - 70

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr Mrs A S Oakley (Chair)
Cllr A E Clark (Vice-Chair) and Cllr M O Davis (Vice-Chair)

Cllr M C Base
Cllr C Brown
Cllr R I B Cannon
Cllr A Cope
Cllr R W Dalton
Cllr D Harman
Cllr F A Hoskins
Cllr S A Hudson

Cllr Mrs F A Kemp
Cllr D W King
Cllr J R S Lark
Cllr H S Rogers
Cllr M Taylor
Cllr D Thornewell
Cllr F G Tombolis

GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED

- (1) All meetings of the Borough Council will be livestreamed to YouTube here, unless there is exempt or confidential business be discussed:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>
- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on committee.services@tmbc.gov.uk in the first instance.

Attendance:

- Members of the Committee/Advisory Board are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chairman, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee/Advisory Board are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.
- Members of the public addressing an Area Planning Committee can participate in person or online. Please contact committee.services@tmbc.gov.uk for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

Ground Rules:

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

Voting:

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

Overview and Scrutiny Committee – Substitute Members (if required)

	Conservative	Liberal Democratic	Green	Ind. Kent Alliance	Note
1	Sue Bell	Tim Bishop	Mark Hood	Wendy Palmer	
2	David Cooper	Paul Boxall	Nick Stapleton	Tim Shaw	
3	Nick Foyle	Trudy Dean			
4	Nicolas Heslop	Roger Roud			
5	Brian Luker	Michelle Tatton			

Members of Cabinet cannot be appointed as a substitute to this Committee

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MINUTES

Thursday, 7th July, 2022

Present: Cllr Mrs A S Oakley (Chair), Cllr A E Clark (Vice-Chair), Cllr M O Davis (Vice-Chair), Cllr R I B Cannon, Cllr A Cope, Cllr F A Hoskins, Cllr S A Hudson, Cllr Mrs F A Kemp, Cllr D W King, Cllr J R S Lark, Cllr H S Rogers, Cllr M Taylor, Cllr D Thornewell, Cllr F G Tombolis, Cllr D J Cooper and Cllr N Foyle.

(Note: As Councillor R Dalton was unable to attend in person and participated via MS Teams he was unable to vote on any matters)

Councillor P Boxall was also present pursuant to Council Procedure Rule No 15.21.

Councillors Mrs P Bates, R Betts, M Boughton, V Branson, D Davis, M Hood, D Keers, P Montague, W Palmer, M Rhodes, J Sergison, K Tanner and M Tatton participated via MS Teams and joined the discussion when invited to do so by the Chair in accordance with Council Procedure Rule No 15.21

Apologies for absence were received from Councillors M C Base, C Brown and D Harman

PART 1 - PUBLIC

OS 22/21 NOTIFICATION OF SUBSTITUTE MEMBERS

Notification of substitute members were recorded as set out below:

Cllr D Cooper – substitute for Cllr D Harman
Cllr N Foyle – substitute for Cllr M Base

In accordance with Council Procedure Rules 17.5 to 17.9 these Councillors had the same rights as the ordinary member of the committee for whom they were substituting.

OS 22/22 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

OS 22/23 MINUTES

RESOLVED: That the Minutes of the meetings of the Overview and Scrutiny Committee held on 10 March and 5 May 2022 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE CABINET**OS 22/24 EXECUTIVE SCRUTINY PROTOCOL**

The report of the Director of Central Services and Deputy Chief Executive reminded Members of the changes to the Council's governance arrangements which had come into effect on 10 May 2022 and had increased the scope, role and responsibility of the Overview and Scrutiny Committee so that it could effectively discharge its functions. The report provided details at Annex 1 of the draft Executive-Scrutiny Protocol agreed between the Leader and the Chair of Overview and Scrutiny which aimed to ensure that there was a constructive relationship between the Executive and the Overview and Scrutiny Committee. The Committee was advised that statutory guidance highlighted the benefits of adopting a protocol to clarify the relationship between it and the Executive to support a framework of strong democratic transparency and accountability and to establish effective communication between Scrutiny and Executive Members which could lead to more effective scrutiny of and support for the Executive.

A number of Members identified the need for training on the new governance arrangements and about the relationship between the Overview and Scrutiny Committee and the new Scrutiny Select Committees and were advised that training for committee members was scheduled to be held on 5 October and that this could be shared more widely if required.

RECOMMENDED: That, subject to clarification of the wording of the Protocol with regard to access to key information (in accordance with paragraph 40 of the Statutory Guidance) in consultation with the Leader and the Chair of Overview and Scrutiny, the draft protocol, as set out at Annex 1 to the report, be commended to Cabinet for approval.

***Referred to Cabinet**

DECISIONS TAKEN BY THE COMMITTEE**OS 22/25 SCRUTINY WORK PROGRAMME 2022/23**

Further to the review of the governance arrangements the report of the Chief Executive identified a number of issues and activity which could benefit from further consideration by the Overview and Scrutiny Committee. In addition to the review topics identified in a canvass undertaken prior to the meeting, it was noted that the Chair had

requested that each agenda of the committee include, as a standing item, an information report on the list of Non-Key Decisions taken by the Executive since the previous meeting of the committee. The topics identified for review were:-

- Planning Enforcement
- Mandatory services and non-mandatory services
- Revenue Estimates 2023/24
- Capital Plan Review 2022/23

In addition to the proposed work programme for the Overview and Scrutiny Committee, details of issues to be considered by the three Scrutiny Select Committees were also provided. During consideration of these topics Members requested that the Housing and Planning Scrutiny Select Committee be asked to include carports, garages and IGN 3 in its consideration of the Local Plan. Additionally, Members felt that consideration of value for money in relation to the Leisure Trust should be dealt with at the Overview and Scrutiny Committee rather than a Select Committee.

RESOLVED: That, subject to the addition of the Leisure Trust, the review items set out in section 1.2.8 to the report, be endorsed.

MATTERS FOR INFORMATION

OS 22/26 BUDGETARY CHANGES AND STRATEGIC RISK REGISTER

Consideration was given to the report of the Management Team which provided high level information in terms of the budget position and the direction of travel. Members were also directed to the red rated risks on the Strategic Risk Register.

RESOLVED: That the report be noted.

MATTERS FOR CONSIDERATION IN PRIVATE

OS 22/27 EXCLUSION OF PRESS AND PUBLIC

The Chair moved, it was seconded and

RESOLVED: That, as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE**OS 22/28 WASTE CONTRACT**

(Reasons: LGA 1972 - Sch 12A Paragraph 3 – Financial or business affairs of any particular person and Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings)

Members gave detailed consideration to the report of the Director of Street Scene, Leisure and Technical Services which provided a detailed response to the request received from two members of the committee for information on the Contract Costs, Penalties and Future Service Review of the Waste Services Contract.

RESOLVED: That

- (1) a report on Key Performance Indicators related to the waste contract be submitted to the Communities and Environment Scrutiny Select Committee on a regular basis to identify performance trends;
- (2) an informal briefing note be circulated to members of the Overview and Scrutiny Committee on the provision of Performance Payments from Kent Council Country outlining their scale over previous years, how they are derived and their relationship to the Inter Authority Agreement between Kent County Council and the Borough Council; and
- (3) an informal briefing note presenting a simplified and overall financial assessment of budgets related to the waste contract be circulated to all members of the Overview and Scrutiny Committee.

The meeting ended at 9.50 pm

Agenda Item 6

Any Executive Decisions which have been “called in”

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TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

06 October 2022

Report of the Director of Planning, Housing & Environmental Health

Part 1 - Public

Matters for Recommendation to Cabinet

1 PLANNING ENFORCEMENT REVIEW

1.1 Background

1.1.1 In January 2022, a scoping report was brought to Overview & Scrutiny that outlined the following areas for a service review to focus on:

- Review the schemes of prioritisation contained within the Plan (and as set out at Annexe 1 to this report) to ensure that the resources of the team remain focused on the most significant breaches and review the associated target timescales to ensure they remain reasonable, proportionate, and fit for purpose
- Linked to the above, review internal processes regarding case allocation, prioritisation and workflow management systems (the steps contained within Section 5 of the adopted Planning Enforcement Plan) to ensure that the adopted schemes of prioritisation and associated actions are adhered to in all circumstances
- Review the content of the Plan insofar as it relates to communicating with complainants (including where Members are the complainant) with a view to establishing key milestones within our investigations where they will be updated and to establish efficient internal processes to ensure agreed measures this is met
- Review the content of the Plan insofar as it relates to updating Members on enforcement investigations, with a particular emphasis on whether such updates should be focused on cases where Members have asked to be kept updated (either via the weekly open case list or otherwise) and/or for certain case types linked to the scheme of prioritisation, for example, and to
- establish efficient internal processes to ensure agreed measures can be met.

1.1.2 The Planning Enforcement Plan was first published in 2016 and has been appended by a number of protocols since that time. It has always been the intention that this document would be subject to regular review to ensure it

remains in line with legislative requirements and is a useful tool for both officers and those who engage with the service. As part of the issues explored below, a proposed revised version of the Enforcement Plan is attached at **Annexe one** and any key changes are highlighted in the body of the report.

- 1.1.3 As of 23 August, there are 435 live enforcement cases on the system which comprise 386 cases under investigation and pending consideration with a further 49 cases either awaiting the assessment of a planning application (before the enforcement case is decided) or having had formal enforcement action taken. In the past three years, the enforcement team have received 339 cases in 2019/20, 325 in 2020/21, 418 in 2021/22.

1.2 Planning Enforcement Plan – Prioritisation

- 1.2.1 At present, the prioritisation table is included within the ‘Involvement in the Process’ section of the Enforcement Plan. It is proposed however to move this to its own section, given that this is a fundamentally important part of the approach. It will now sit as Part 2, with Part 3 being for involvement in the process.
- 1.2.2 Given numbers of cases routinely reported to the Council, there are the following number of cases within the existing categories (snapshot from Member tracker data of 23 August);

Top	23
High	119
Medium	274
Other	11

The remaining eight cases are made up of High Hedge complaints and breaches of Article four Directions.

- 1.2.3 The information above demonstrates that with our case levels, the priority rankings are not nuanced sufficiently to ensure that the targets are achievable.
- 1.2.4 A proposed revised priority table, with additional targets and priorities, is also included in the attached Enforcement Plan. This includes the existing target for a site inspection to be undertaken and a target for acknowledgement (see 1.3.4 below).

1.3 Planning Enforcement Plan – Communication

- 1.3.1 The nature of Planning Enforcement investigations, where there are often ongoing legal processes involved that mean information has to remain confidential, can result in communicating with stakeholders in a way that meets their expectations

becoming challenging. It is therefore essential that the service is clear from the outset of any engagement about what updates will be feasible and legally permissible.

- 1.3.2 The Planning Enforcement email inbox, which is a key source of case reports, has an auto response on it to acknowledge receipt of the email. It is proposed that this is updated to better manage expectations and to include a link to the Planning Enforcement Plan as well as an explanation that not every email will be individually acknowledged. This message will reflect information provided on the Council's website and is designed to manage expectations about the Planning Enforcement process.
- 1.3.3 At present, those reporting a breach who are not borough Members receive an acknowledgement letter stating that the matter they have raised is to be investigated and directing them to the Planning Enforcement Plan for further information. They also receive an update at case closure to inform them of the final outcome. Both of these are issued automatically via email where that information has been provided, or by post. In addition to this, case officers informally update stakeholders where possible throughout the progress of a case, however this is not applied consistently due to the varying nature of cases and the high caseloads officers currently carry. It is the intention therefore that additional automated updates are implemented as part of the move to the new Agile system. This will mean that from April 2023, where it is legally permissible to provide an update at key stages of an investigation such as when a retrospective planning application is submitted, or enforcement action has been taken (not specifying the type of action), these will also be automatically sent to those listed on the case file as 'interested parties'.
- 1.3.4 In addition to this, the Enforcement Plan currently states that we will let those who raise an issue know what priority the case has been given and who is investigating it. However, this information is not currently provided as part of the acknowledgement letter. It is therefore proposed that the current template be amended and that an acknowledgement target is set accordingly. This will ensure that the customer who raises the issue will be informed of the priority of the case and the case officer at the same time and within two days of the issues being raised with the Council. This will require a change of process and it is therefore proposed that this is implemented ahead of the Agile template changes or in tandem with them to take effect at the earliest opportunity. In addition to this, the acknowledgement letter will explain that follow up communication from stakeholders will not always be individually acknowledged, for example where it is a follow up report on the same or similar potential breach. The auto response email from the Planning Enforcement inbox will serve as confirmation that the information has been received, however it is considered that manual acknowledgement of this type of message is not an efficient use of officer time, especially when the additional automated notifications are introduced.

- 1.3.5 Members currently receive a weekly list of opened and closed enforcement cases, which contain confidential information that is not to be shared more widely. Although these are considered a useful snapshot tool across the borough, officers routinely receive Member queries about ongoing cases that these lists do not enable. The Head of Planning, working closely with IT, has therefore developed a Planning Enforcement Tracker tool for Members. Prior to this meeting, all Members have been sent a link to that tool, which is designed to ensure that Members can access real time information about updates on cases. Officers have commenced a revised working practice that sees them update case files on a more regular basis, which generates the case updates shown in the tracker. A further overview demonstration of the tracker will be presented as part of this report and Members are encouraged to raise any queries about its use with the Head of Planning to ensure that best use is made of this tool.
- 1.3.6 The next stage of developing the approaches mentioned above will be to enable full mobile working capabilities for enforcement case officers, whereby they are able to use portable devices on site (where it is safe to do so) to complete case updates and record findings. This will enable site visits to be carried out more efficiently and for decisions on cases to be completed or closed down more quickly. As the new Agile system will be implemented by April 2023, it is proposed that mobile working capability be introduced alongside this.
- 1.3.7 At present, the Planning Enforcement Plan does not have a separate section relating to Member communication. In the draft appended to this report, the insertion of a section is proposed, both to ensure that Members are clear on what has been agreed to but also to ensure that stakeholders more widely understand that some information can only be shared with Members and not with other interested parties.

1.4 Resourcing the Planning Enforcement Function

- 1.4.1 The proposed changes to the Planning Enforcement Plan, the digital improvements detailed in this report and the number of cases received each year and live cases in the system provide a revised basis for considering staffing requirements in the Planning Enforcement team. There is also a need to consider what work is considered to be required and core to the function.
- 1.4.2 Outside the core work of the team in reviewing and enforcing Planning breaches, the officers also play a lead role, in close collaboration with Legal Services, on short term unauthorised traveller encampments (longer term unauthorised encampments are considered part of the core work of the team) on Council, Parish/Town Council and Leisure Trust Land. At present, this activity is charged at a flat rate per incursion of £400 or £600 should the case go to court. Having carried out an assessment of the time spent by both Planning Enforcement and Legal officers, it is considered that based on the average time spent, cost recovery for this work would sit at around £1,400 (should the case go to court). Therefore, at present, the Council is making a considerable loss every time this

activity is undertaken. This is in addition to the fact that several of the activities for Planning Enforcement Officers need to be undertaken by two team members for safety reasons and therefore this is a considerable drain on team capacity.

- 1.4.3 On the assumption that Members wish us to continue to offer this service to Parishes and Leisure Trust (which not all Councils do), we need to seek cost recovery and accept that in the months when this activity is most prevalent, officer time will potentially be limited on other enforcement activity.
- 1.4.4 At present, the Development Manager is the only senior manager overseeing the Planning Enforcement function and all case endorsement sits with that role. Given the wider range of requirements that role has, this is not an effective or efficient use of their time and may well result in delays to enforcement cases being concluded. As Members may be aware, a new permanent incumbent will start in the Development Manager role in October 2022, and it is considered important to ensure that they are able to provide oversight of their functions rather than needing to provide operational management. Moreover, as per the recent confidential report to the General Purposes committee, operational management arrangements have been introduced or amended across other Development Management functions both to empower officers and to make processes more efficient, so there is an argument that not to do so in Planning Enforcement would leave this function out of line with the rest of the service and could create a potential drain on management resource as a result.
- 1.4.5 The Head of Planning has been carrying out successful backlog exercises with both the Development Management and Planning Technical teams over the past few months. It is proposed that in order to support the implementation of the revised processes identified in this report, the agency member of staff who is currently filling a Planning Enforcement Officer role (to maintain capacity during a period following the departure of a permanent member of staff and prior to this reporting cycle) be retained until end of the financial year (in line with Agile implementation) in any staffing option, in order to work on case backlogs and provide transitional capacity. This decision to continue this fixed term resource is delegated to Chief Officers and as such has been approved by Management Team.
- 1.4.6 Given all of the matters laid out in this report, it is considered necessary to review the staffing structure in the Planning Enforcement Team. Four options are laid out below for Members' consideration.
- 1.4.7 *Do nothing scenario* – at present, the team structure is as shown at **Annexe two**. Although there is a senior officer, this role is not graded at such a level as to have significant management responsibility and is rather a role for a very experienced enforcement officer to manage complex cases. At present however, due to the fact that this planning function has no interim management before reaching the Development Manager (as outlined above at 1.4.4), this officer is currently operating in a quasi- managerial role, which removes capacity from enforcement

activity. Given caseloads and management structure, it is considered that should the digital changes outlined above (Agile implementation and Enforcement Tracker) be implemented but there is no change to the existing structure, it is unlikely that improvements to timescales for investigations and follow up activity will be significantly improved, as the current cohort of officers will continue to have to manage all aspects, albeit that Members and stakeholders will be kept better informed and this may see some reduction in administrative activity to manage stakeholder engagement. It will also mean that implementation of the revised approach to prioritisation proposed in this report is likely to take longer due to the need for officers to complete the backlog exercise and to maintain incoming case timescales.

- 1.4.8 Optimised growth scenario – **Annexe three** shows the proposed structure. This option assumes the digital changes and efficiencies created by the introduction of Agile outlined above are implemented and that 3 roles are maintained within the team but that one of the Planning Enforcement Officer roles is changed to a Principal Planning Enforcement Officer at M8. This role would manage case allocation, decision sign off and complex multi-agency cases as well as taking line management responsibility for the Senior Planning Enforcement Officer and Planning Enforcement Officer roles. The role would also have responsibility for formal enforcement action sign off on specified cases. This would mean that those two posts would be able to focus solely on inspections and casework (including short term unauthorised traveller encampments) and would in time have digital working capability to streamline their processes and reduce case timescales. It would also be part of this new role to review the protocols that sit alongside the Planning Enforcement Plan and liaise with colleagues in Legal, as well as the Landscape Officer (in relation to Tree Protection). This is still considered to be a lean structure given the case levels in the team; however, it provides a more graduated management structure and allows case officers to focus on that aspect of the enforcement process more fully, whilst taking account of the Council's wider financial challenges. Details of the financial implications of the options are detailed at 1.6 below.
- 1.4.9 Full resourcing scenario – given the importance that Members understandably place on Planning Enforcement, officers have also considered an option which augments the current structure rather than amending it. In this proposal, the Principal Enforcement Officer role at M8 would be in addition to the existing 3 roles and would provide ongoing resilience and capacity to both manage the team but also resolve more cases more quickly. It should be noted however that this results in significant growth on base budget.
- 1.4.10 Hybrid proposal scenario – although more challenging to recruit to, as the team currently has a permanent vacancy (staffed by an agency member of staff at present, as above) at Planning Enforcement Officer level, a hybrid proposal would be to implement the Optimised Growth structure permanently, with a two-year fixed term role at Planning Enforcement Officer level to provide some additional short-medium term capacity whilst new ways of working are embedded. This

would also allow the new incumbent in the Development Manager post sufficient time to implement any further service efficiencies that they identify.

1.5 Legal Implications

- 1.5.1 Having an effective Planning Enforcement Plan in place ensures that there is a framework for prioritisation and decision making that reduces the risk of the Council's decisions being subject to successful legal challenge. It is also considered to be best practice to have such a plan in place.
- 1.5.2 Planning enforcement work is discretionary and there are no statutory provisions *requiring* the Council to undertake such work. However, as set out in the NPPF, effective planning enforcement is important to maintain public confidence in the planning system. Insufficient or ineffective enforcement could lead to long term harm to the amenity of the Council's area, a lack of trust in the planning system and an inability for the Council properly to administer effective planning control.

1.6 Financial and Value for Money Considerations

- 1.6.1 The cost of the optimised growth option is £24,913 growth on the Council's base budget.
- 1.6.2 The cost of the full resource option is £62,165 growth on the Council's base budget.
- 1.6.3 The cost of a fixed term two-year Planning Enforcement Officer post is £37,252 per annum. Should O&S endorse this approach alongside the optimised growth option, then Management Team have agreed this fixed term post in principle.
- 1.6.4 At present, no offset savings are identified to mitigate the potential growth. As per the recent report to Members on staffing resource in the Planning Service more widely, service efficiency will be considered again once the implementation of Agile is completed.
- 1.6.5 It is essential for the Council's overall financial viability that where services are provided, costs are recovered. As such, it is proposed that the fee for enforcement work relating to traveller incursions on Parish or Leisure Trust land is increased to £950 for initial action, increasing to £1,400 where the case is taken to court.

1.7 Risk Assessment

- 1.7.1 Stakeholder expectations are not met - reputational risk which undermines the confidence in the planning system.
- 1.7.2 Breaches rise due to Council's inability to efficiently enforce due to workload and resourcing issues.

- 1.7.3 Recruitment to new post/s takes longer than expected due to market forces and necessitates employing a consultant for a longer period with consequential impact on rising caseloads and costs.
- 1.7.4 Potential delays in having a new structure agreed due to internal governance and associated impact on case load and priorities.
- 1.7.5 Future changes are not effectively implemented due to a lack of resources
- 1.7.6 Agreement is not reached on increased fees for dealing with short term encampments which means that costs recovery is not achieved and diverts resources away from other priorities.
- 1.7.7 Potential misalignment with other recent changes agreed by General Purposes Committee for other Development Management functions to empower officers and to make processes more efficient which could have the effect of de-motivating team members in the enforcement team.
- 1.7.8 Risks associated with backlogs in the court system which could delay taking action to remove short term unauthorised traveller encampments and consequential impacts on the Council's reputation for taking decisive action.

1.8 Equality Impact Assessment

- 1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.9 Policy Considerations

- 1.9.1 Business Continuity/Resilience
- 1.9.2 Human Resources

1.10 Recommendations

The Overview & Scrutiny Committee is asked to;

- 1.10.1 CONSIDER the proposed changes to the Planning Enforcement Plan and the associated activity and timescales, as laid out in section 1.2 and 1.3 of this report and RECOMMEND to Cabinet that these changes be agreed for implementation.
- 1.10.2 CONSIDER the resourcing options laid out at Section 1.4, to be read alongside the financial considerations at section 1.6 and the risk assessment at section 1.7 and AGREE an option to propose to General Purposes Committee.
- 1.10.3 RECOMMEND the increase in the fees charged for activity relating to traveller incursions on Parish or Town Council or Leisure Trust land laid out in Section 1.4 to be read alongside the financial considerations at section 1.6 and the risk

assessment at section 1.7, for consideration by Council as part of the budget setting process.

Background papers:

Annexe 1 – Revised and updated Enforcement Plan

Annexe 2 – Current team structure

Annexe 3 - Proposed structure options

Contacts: Eleanor Hoyle,

Director PHEH

James Bailey,

Head of Planning

Eleanor Hoyle

Director of Planning, Housing and Environmental Health

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Annexe One – Planning Enforcement Plan

Tonbridge and Malling Borough Council

Planning Enforcement Plan

Planning Enforcement plan

Contents:

PART 1: BACKGROUND CONTEXT

- 1 Introduction and Context
- 2 The Scope of Planning Enforcement
- 3 The general approach to Enforcement - guiding principles

PART 2: HOW WE DEAL WITH ALLEGED BREACHES OF PLANNING CONTROL

- 4 How we prioritise cases
- 5 How we Investigate alleged breaches
- 6 What we do if a breach is identified

PART 3: INVOLVEMENT IN THE PROCESS

- 7 Advising the Council of possible breaches
- 8 Communication with Members
- 9 Communication with stakeholders
- 10 Parish and Town Council involvement

PART 4: MANAGING PLANNING ENFORCEMENT

- 11 Scheme of delegation

PART 1: BACKGROUND CONTEXT

A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 as: the carrying out of development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted.

1. Introduction and Context:

- 1.1 This document sets out the approach the Council will take in relation to breaches of planning control in the Borough. Where breaches take place planning law lays down strict requirements which must be followed before the Council can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the borough.
- 1.2 The Council understands that breaches of planning control impact on peoples' lives. Consequently, the delivery of effective planning enforcement is an important issue.
- 1.3 With this in mind, this Plan sets out how the Council's planning enforcement service will seek to address breaches of planning control and prioritise its work. It describes the range of powers available to the Council, how the Council will decide whether or not to pursue enforcement action and the process of enforcement.
- 1.4 The Council's objectives in producing a Planning Enforcement Plan are consistent with the National Planning Policy Framework 2021 (NPPF). The Framework states:

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

- 1.5 Planning enforcement covers the areas of planning permission, advertisement consent, listed building consent, and conservation area consent and tree preservation orders. National legislation allows some minor

Planning Enforcement plan

and small-scale works to be undertaken without the need for any further consent or approval. These works are known as "permitted development". Any works carried out as permitted development cannot be subject to enforcement action.

- 1.6 This Plan is in accordance with the objectives and approaches contained within the Council's [Corporate Enforcement Policy](#) and should be read in conjunction with that document.
- 1.7 In dealing with any enforcement issues the Council must take into account the Council's adopted frameworks and strategies as well as the guidance contained within the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG).

2. Scope of Planning Enforcement:

There are two key principles which underpin the planning enforcement system:

A breach of planning control is not a criminal offence, except for unauthorised works to listed buildings, illegal advertisements, demolition without consent and unauthorised works to trees with Tree Preservation Orders or within Conservation Areas.

Other than in these cases, a criminal offence only arises when an Enforcement Notice or other formal notice has been served and has not been complied with upon the expiry of a specified time limit.

- 2.1 There is a common misconception that breaches of planning control are a criminal offence and should automatically attract formal enforcement action. In fact, enforcement action is a discretionary power. It is for each local planning authority to decide the amount of resource to put into enforcement, how to determine when action is necessary and the type of action that is appropriate. In making these decisions the authority should be mindful of maintaining public confidence in the planning system but it should be recognised that in the majority of cases, formal enforcement action should be seen as a last resort.

It is at the Council's discretion whether action will be taken - any action proposed must be proportionate to the alleged breach and be in the public interest.

- 2.2 In investigating alleged breaches of planning control formally reported to it, the Council will make a reasoned decision whether the alleged breach merits further action. However, formal enforcement action will only be taken where it is fair and reasonable to do so. In making this judgement, we will assess all of the circumstances of the case and make reference to our adopted planning

Planning Enforcement plan

policies. In addition we must also consider central government enforcement policy and guidance which is currently set out in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG) which specifically references when Authorities should take enforcement action.

2.3 Importantly, the NPPF sets out that 'local planning authorities should act proportionately in responding to suspected breaches of planning control'.

Formal enforcement action may only be taken in cases where:

- (i) there is a breach of planning control and
- (ii) it is expedient to take such action.

What does expedient mean?

In general terms, this means where an unauthorised development is causing serious harm, rather than it being a minor or technical breach of planning control.

The matter of "expediency" covers a range of matters upon which a judgement needs to be based, a key issue is whether the breach would unacceptably affect public amenity or use of land that should be protected in the public interest.

Any enforcement action should be proportionate to the breach, so for example, it would be inappropriate to take formal action against a trivial or technical breach.

There will be cases where there is a breach of planning legislation, but the breach or harm is so minor that action cannot be justified i.e. it is not expedient or in the public interest to pursue the case.

2.4 Examples of harm resulting from a breach of planning control could concern:

- Harm to amenity
- Highway safety issues for example danger from increased traffic flows
- Noise nuisance
- Loss of daylight or privacy

2.5 This is not an exhaustive list of 'harm' but indicates that there must be recognisable planning harm.

2.6 Such harm would not include, for example:

Planning Enforcement plan

- Loss of value to a neighbouring property
- Competition to another business
- An extension to a building that is slightly larger than permitted development rights allow but does not create any comparative harm
- Private rights to a view

2.7 As such, the planning enforcement team will not investigate the following:

- Neighbour disputes or other civil issues including boundary disputes or enforcement of covenants. In these matters, complainants need to contact their solicitor or local Citizens Advice office
- The use of or development on adopted highways, pavements or highway grass verges. These matters should be addressed to Kent County Council as the Highways Authority
- Dangerous structures. These matters should be addressed to the Council's Building Control team
- Fly-tipping, litter and fly posting. These should be addressed to the Council's Waste and Street Scene Service.

3. The general approach to Enforcement - guiding principles:

3.1 Government guidance on enforcement focuses not just on the impact of any breach on the complainant but on the rights of the owner or occupier where the alleged breach is occurring. With this in mind, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement plan as part of this commitment. When exercising its enforcement functions the Council will act in a way that is:

- Consistent and fair

We will look at past cases and try to take a similar approach, for consistency, where this seems fair and reasonable. Cases will be investigated in accordance with the priorities set out within the plan.

- Transparent and accountable

Members, residents, existing and potential local businesses, complainants, alleged offenders and council staff should understand how we provide the service and the principles that guide it. We will provide an easy-to-access service, where the procedures, level of service provided and the rights of appeal for the alleged offenders are clearly explained and easy to understand.

- Proportionate and targeted

Any proposed action is in keeping with the scale of the alleged breach and the amount of harm caused. In each case we will decide on the most appropriate course of action to follow. Under the law we are only allowed to take enforcement action if it is expedient to do so having taken into account government guidance, our own development plan policies and the specific circumstances of the case.

PART 2: HOW WE DEAL WITH ALLEGED BREACHES OF PLANNING CONTROL

4. How we prioritise cases

- 4.1 When the Enforcement Team receives an allegation that a breach of planning control may be occurring, the case will be assigned by a senior officer to a member of the Enforcement Team. An initial assessment of the nature of the breach is then carried out and the case is categorised according to what level of priority it should be accorded.
- 4.2 All allegations of planning control breaches will be prioritised and investigated thoroughly and accurately. Below are the priorities we have assigned to different types of alleged breaches, and the target times we have set to carry out an initial site visit and send an acknowledgement to the complainant.

PLEASE BE AWARE: These are target timescales for the undertaking of an initial site inspection and will be adhered to as far as reasonably practicable in the prevailing circumstances. Following the initial inspection, a subsequent investigation will take place the length of which will be dependent on the complexities of the individual case.

Priority ranking	Case characteristics	Targets for 1) Initial site inspection 2) Acknowledgement to the complainant	Comments
Top	1. Work to Listed Buildings. 2. Work to protected trees. 3. Development likely to have a serious impact on health or public safety. 4. Breaches of planning control in respect of development subject to Environmental Impact Assessment	1) 1 working day 2) Within 2 working days	In effect the approach would be as soon as possible to prevent irrevocable damage.

Priority ranking	Case characteristics	Targets for 1) Initial site inspection 2) Acknowledgement to the complainant	Comments
High	<ol style="list-style-type: none"> 1. Development causing significant harm the quality of life of a significant number of local residents. 2. Development with some (less serious or immediately threatening) impact on health or public safety. 3. Development causing potential harm to a Conservation Area or Site of Special Scientific Interest. 4. Development potentially causing significant harm to the landscape. 	<ol style="list-style-type: none"> 1) 5 working days 2) Within 2 working days 	Cases with these characteristics are inevitably themselves subject to assessment and judgement during triage - may require engagement with outside specialist bodies which may have more appropriate powers of control or enforcement (e.g. Environment Agency, Health and Safety Executive)
Medium	<ol style="list-style-type: none"> 1. Development which causes limited harm to individuals and/or local communities. 2. Development other than of a wholly minor nature not falling within any other category. 	<ol style="list-style-type: none"> 1) 10 working days 2) Within 2 working days 	
Other	<p>Minor developments such as sheds, fences. Most advertisements. Other minor breaches of planning conditions. Minor departures from approved plans. Most cases of untidy sites other than those which have particular characteristics which fall within a higher priority</p>	<ol style="list-style-type: none"> 1) 15 working days 2) Within 2 working days 	

4.3 This prioritisation reflects the perceived urgency and level of harm arising to amenity or to areas or features that benefit from special protection.

4.4 At this stage the complainant is informed of the case officer's name and

Planning Enforcement plan

contact details. The named Officer will act as the main point of contact and will advise all parties on the outcome of the case. It should be noted that due to the confidentiality requirements of some of the legal processes involved in Planning Enforcement cases, detailed updates on, for example, the type of enforcement action being taken, cannot be provided to members of the public.

- 4.5 Additionally, Borough Council Members are informed of the receipt of allegations on a weekly basis.

5. How we investigate alleged breaches

- 5.1 The enforcement case officer will inspect the site within the given timescale to determine if a breach of planning control is occurring. This is an essential part of almost every case to establish the actual circumstances on the ground and will also involve research into the site planning history.
- 5.2 If there is no evidence of a breach occurring at this stage, a brief report is produced by the case officer and passed to a Team Leader/Principle Planning Officer or the Development Manager for endorsement.
- 5.3 Should the first inspection prove inconclusive, the enforcement case officer will contact the site owner requesting a meeting on the site, or request further information as might be necessary, so that further investigations can be undertaken.
- 5.4 Whatever the assessment, the complainant will be informed and advised of the next course of action.

6. What we do if a breach is identified

- 6.1 If a breach of planning control is found an assessment must be made, on a case-by-case basis, as to whether:
- it is or is not appropriate to take any further action at all
 - to proceed to try to resolve the breach informally through negotiation
 - to seek to invite a retrospective planning application; we will only do this if there is some prospect of permission being granted
 - to proceed directly towards formal action such as the service of an enforcement notice.
- 6.2 The assessments are made by the Enforcement Team member, in conjunction with a senior officer, who also endorses any recommendations made.

No formal action

Planning Enforcement plan

- 6.3 It is not automatically the case that the Local Planning Authority will take any action (whether formal or informal) in the event that a breach is discovered to seek to rectify matters. A judgement must be made in each and every case as to whether any action is expedient. This judgement will involve consideration of the seriousness of the breach, the level and nature of any harm that is being caused, and the proportionality of any contemplated remedial action. If the breach is relatively minor, inconsequential or of a purely technical nature, there will be some instances where no further action is appropriate.

Negotiation:

- 6.4 In some cases, it may be possible to bring about a satisfactory resolution through informal action such as negotiations with those responsible. This may, for example, bring about the cessation of the unlawful activity, or reduce any harmful impacts so that they are within acceptable bounds.
- 6.5 Government guidance makes it clear that in all but the most serious cases we should initially seek to have planning breaches remedied through negotiation. In these events, the person carrying out the breach will be sent a letter confirming that the breach should be remedied in a specific timescale, or information should be provided to justify to us that no further action should be taken.

Retrospective planning applications:

- 6.6 A local planning authority can invite a retrospective application. In circumstances where they consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (Section 73A of the Town and Country Planning Act 1990) without delay.
- 6.7 We will only do this where it is considered that there is a reasonable prospect of permission being granted. The invitation to submit an application is not, however, meant to imply that permission will necessarily be granted. But it does provide a formal process for consideration of the merits of the case including, importantly, public consultation. In many cases where we follow this course of action, we may eventually conclude that it is appropriate to grant permission subject to conditions that exercise control over the most significant and potentially harmful impacts.

When might it be appropriate to serve an Enforcement Notice?

- 6.8 Wherever possible, we will try to resolve harmful activities through informal action or the planning application process. However, where it is felt that the breach is significantly harmful and is unlikely to be rectified by way of the submission of a planning application we will request that the breach is

ceased/remedied within a specified timescale; this is determined on a case-by-case basis and will depend upon the seriousness of the breach and the nature of harm that is being caused. Should the owners fail to meet this request then enforcement action is required.

- 6.9 Enforcement Notices are our main enforcement tool. Government guidance sets out that the power to issue an enforcement notice is discretionary (Section 172 of the Town and Country Planning Act 1990). An enforcement notice should only be issued where we are satisfied that it appears that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.
- 6.10 Enforcement notices are formal legal documents that will require the owner or occupier to take specific steps to remedy the planning breach in a specified time. If the notice is not complied with the planning breach will become a criminal offence which can be prosecuted in the Courts. However, the notice may be appealed to an independent, government- appointed Planning Inspector. In such cases the effect of the Enforcement Notice is suspended whilst the appeal is ongoing. Inspectors can decide to uphold the notice, amend it or have it quashed.
- 6.11 Alternatively, if the breach consists of a breach of conditions on an existing permission, a Breach of Conditions Notice can be issued. In this case, a continuing breach could lead to prosecution in the Magistrates' Court. There is no right of appeal against a Breach of Condition Notice.
- 6.12 Where a planning application is invited but none is submitted within a reasonable period, consideration is given to taking further action. Where formal action is contemplated, we will take legal advice before commencing such action.
- 6.13 In addition, the Council will, in exercising its duties under Regulation 35 of the Environmental Impact Assessment Regulations 2017, have particular regard to any breaches which have implications for features of developments intended to avoid, prevent, reduce or offset significant adverse effects on the environment that have been approved within the context of an Environmental Statement.

Other possible types of formal action:

- Planning Contravention Notice (PCN)

- 6.14 This is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. A planning contravention notice may be issued under Section 171C of the Town and Country Planning Act 1990 and can be used to do the following:

Planning Enforcement plan

- a) allow us to require any information for enforcement purposes about any operations being carried out, any use of or activities being carried out on the land
 - b) can be used to invite its recipient to respond constructively to us about how any suspected breach of planning control may be satisfactorily remedied
- 6.15 The issuing of a PCN is discretionary. We need not serve one before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.
- 6.16 It is a criminal offence to give false or misleading information in response to a PCN and in the event the Council becomes aware of such an occurrence consideration will be given as to whether prosecution of the offence would be in the public interest.
- Section 215 notices
- 6.17 A Local Planning Authority has the power to issue a notice under s215 if the amenity of part of its area is adversely affected by the condition of a piece of land. The notice requires such steps as may be specified for remedying the condition of the land (includes buildings) and provides a minimum of 28 days before it takes effect. There is no right of appeal to a planning inspector, although before the notice takes effect an appeal may be made to the Magistrates Court by those served with the notice or any other person having an interest in the land. The Council will consider serving such a notice where clear and demonstrable harm is arising to public amenity as a direct result of the condition of a piece of land.
- Stop Notices, Temporary Stop Notices and Court Injunctions
- 6.18 These can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified. They will therefore generally only be used in the most serious cases. The use of injunctions will be considered in appropriate cases, such as where a listed building is undergoing alterations without consent that affects its special historic and architectural interest or where the Council has evidence that a site will be developed without planning permission and in doing so will cause serious harm to particular planning interests.
- Prosecution
- 6.19 In most cases the Council cannot prosecute until we have taken formal enforcement action through the service of a formal notice, such as an Enforcement Notice or Breach of Conditions Notice, and any period specified in that notice has expired.

Prosecution does not bring about the remedying of a breach; rather it can be

Planning Enforcement plan

seen as the Courts "punishing" the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect.

We will not take a prosecution forward without first taking legal advice. As part of that advice, an assessment will be made as to whether there is sufficient evidence to take a prosecution forward and whether it is, in all the circumstances, in the public interest to take a prosecution, in accordance with the Code for Crown Prosecutors.

- Additional prosecutions in response to ongoing non-compliance

Further to prosecution action as set out above, the breach of a notice may continue. In such circumstances, the Council will consider whether further prosecutions are appropriate and in the public interest in addition to the following possible courses of action.

- Proceeds of Crime Act 2002 (POCA)

Confiscation orders under the Proceeds of Crime Act 2002 (POCA) provides power to local authorities to obtain confiscation orders against people who commit planning crimes, to deprive them of the financial benefit they have gained as a result of committing planning crimes.

With a few exceptions, breaching planning control is generally not a criminal offence, but such activities can become criminal where they continue to occur in breach of a valid, effective enforcement notice.

Obtaining a confiscation order under POCA in these circumstances punishes the offender by forfeiting the profits attributable to the planning breaches, and in such circumstances the local authority receives a share of those profits. Using careful judgement and thorough investigation, local authorities can use this tool to target known repeat offenders, creating a real deterrent against breaches of planning law, while at the same time recovering sums to cover costs of any necessary remedial action.

In considering cases of ongoing breaches of effective enforcement notices, the Council will consider whether such action is appropriate and proportionate.

- Injunctions

The Council will, when it is considered to be expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control (section 187B of the Town and Country Planning Act 1990).

- Direct Action

Planning Enforcement plan

The Council has the power in certain circumstances to make sure an enforcement notice is complied with by carrying out the required steps directly. It can also make the decision to take direct action to remedy a breach of planning control rather than serve a formal notice in the first instance.

In such circumstances, the Council can recover all the costs incurred from the owner. Deciding whether or not to pursue direct action will only be done following a detailed review all the relevant circumstances of an individual case and the balancing of all determinative factors. Such action will only be taken if the Council is confident that it is proportionate and necessary to do so.

Out of Hours

There is rarely an opportunity or a justification for action to be taken out of hours whilst balancing all the relevant elements including European Convention on Human Rights (ECHR) considerations, and as such the Council does not operate an out of hours planning enforcement service.

PART 3 – INVOLVEMENT IN THE PROCESS

7. Advising the Council of possible breaches:

- 7.1 Reports of possible breaches of planning control should, whenever possible, be made in writing. This enables the Council to have a written record of the need for initiating investigation and possible action. Reports of suspected breaches can be made by:
- Completing an [online enforcement investigations form](#) which can be found on the Councils website
 - Emailing planning.enforcement@tmhc.gov.uk or
 - Sending a letter to the Planning Enforcement Team at the Council's Kings Hill offices
- 7.2 When this is not possible reports should be made in person, for example, by telephone to enable Council officers to make a detailed written record.
- 7.3 Anonymous reports will not be investigated unless they concern a statutory listed building or a protected tree.
- 7.4 Vexatious or repeated complaints will not be investigated. The Development Manager will determine these on a case by case basis.
- 7.5 No personal data relating to those making complaints will be shared with any party involved in the alleged breach.
- 7.6 In the event that a request is made to the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004,

Planning Enforcement plan

personal information of individual complainants will not be disclosed in accordance with the principles of relevant data protection law.

7.7 If we have been informed that you may be responsible for a planning breach we will:

- provide identification whenever we visit
- provide the name of the officer carrying out the investigation
- investigate the complaint thoroughly before making any decision on what action to take
- write to you explaining our conclusions
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen
- inform you if we decide to issue an Enforcement Notice, intend to take any direct action or start legal action

7.8 If you feel that there has been an error in the way in which an enforcement investigation is being carried out, or you are dissatisfied with the outcome of the Council's investigations, you should use the Council's formal complaints procedure which can be found on the Council's website at [Make a complaint – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](http://tmbc.gov.uk)

8. Communication with Members

8.1 Borough Council Members are informed of the receipt of allegations of breaches of planning on a weekly basis and are also informed of all cases that are closed.

8.2 Due to the confidentiality requirements of some of the legal processes involved in Planning Enforcement cases, detailed updates on, for example, the type of enforcement action being taken, cannot be provided to members of the public. However due to the nature of member involvement in operational matters, certain categories of information relating to the type of enforcement action being taken can be provided to Borough Councillors.

8.3 In addition to this Borough Councillors have access to a digital Enforcement Tracker which enable them to access real time information on enforcement complaints.

9. Communication with Stakeholders

9.1 If any stakeholder (a member of the public, a Parish or Town Council or a borough Councillor) draw our attention to a possible planning enforcement issue we will:

- not consider anonymous enquiries or vexatious or repeated complaints
- write to acknowledge your complaint within the prescribed time period
- write to let you know the priority it has been given and who is investigating it
- contact you if we need further information

- keep you informed on progress at key stages of our investigation
- let you know the final outcome of your complaint
- treat your complaint confidentially

10. Parish and Town Council involvement

10.1 In addition to this, if you are a Parish or Town Council:

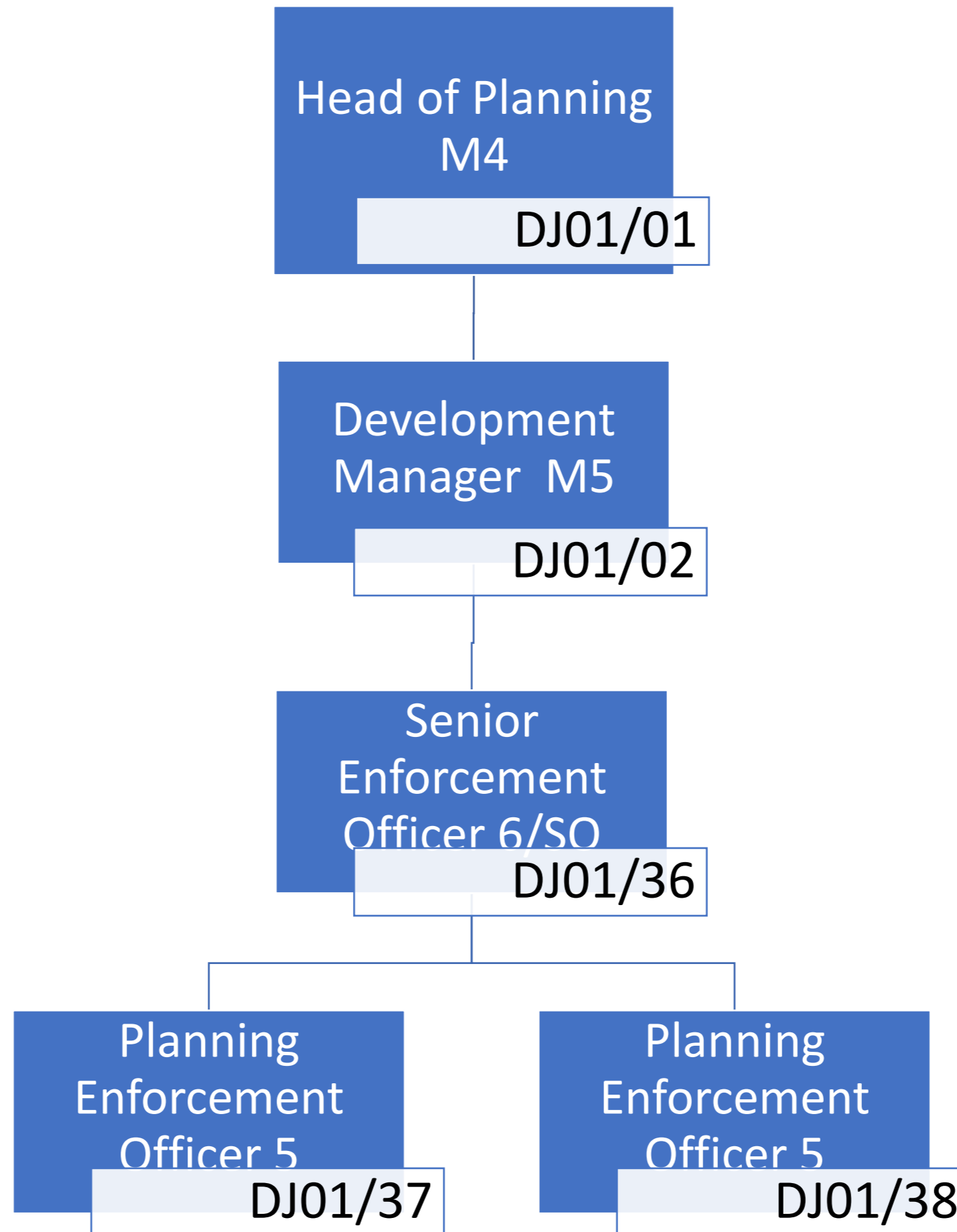
The Council recognises that parish and town council members have an important role to play in this process. Town and Parish Councils have a great deal of local knowledge and awareness of what is happening in their areas. Town and parish councils can inform the planning enforcement process and as such the Council encourages them to engage with officers over planning enforcement issues, on the understanding that decisions on whether or not to take enforcement action are governed largely by the law and clearly defined material planning considerations and as a result cannot be unduly influenced only by local perception.

PART 4 MANAGING PLANNING ENFORCEMENT

11. Scheme of delegation

- 11.1 The Director of Planning, Housing and Environmental Health has delegated authority to issue all planning enforcement notices.
- 11.2 The responsibility for endorsing decisions will sit with the relevant Team Leader or Service Manager in Planning Services (the Team Leader will not endorse their own decisions) and will be escalated to the Head of Planning or Director of PHEH as necessary.
- 11.3 The decision as to whether criminal, or other legal proceedings should be brought, is delegated to the Director of Central Services. In addition, there is standing authorisation from the Director of Central Services to the Head of Legal and Democratic Services to make such decisions.

Annex 2 - Enforcement Team Existing Structure - September 2022



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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

6 October 2022

Report of the Chief Executive

Part 1- Public

Matters for Information

1 LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN – ANNUAL REVIEW LETTER

To set out the annual report of the Ombudsman regarding complaints received and dealt with over the period 1 April 2021 to 31 March 2022.

1.1 The Annual Letter

1.1.1 Each year, the Ombudsman provides the Borough Council with a report of the formal complaints he has dealt with and the outcomes of those complaints. This report covers the period for 1 April 2021 to 31 March 2022.

1.1.2 The Ombudsman received 20 formal complaints over that period. The outcomes were as follows:

Complaints decided -19

Complaints upheld – 0

Not upheld - 5

Complaints referred back for local resolution – 5

Complaints closed after initial enquiries - 7

Complaints incomplete/invalid – 0

Advice given - 2

1.1.3 A copy of the Ombudsman's letter is attached at **Annex 1**.

1.2 Legal Implications

1.2.1 None

1.3 Financial and Value for Money Considerations

1.3.1 None

1.4 Risk Assessment

1.4.1 N/A

1.5 Policy Considerations

1.5.1 N/A

Background papers:

contact: Julie Beilby

Nil

Julie Beilby
Chief Executive

20 July 2022

By email

Ms Beilby
Chief Executive
Tonbridge and Malling Borough Council

Dear Ms Beilby

Annual Review letter 2022

I write to you with your annual summary of complaint statistics from the Local Government and Social Care Ombudsman for the year ending 31 March 2022. The information offers valuable insight about your organisation's approach to complaints. As such, I have sought to share this letter with the Leader of your Council and Chair of the appropriate Scrutiny Committee, to encourage effective ownership and oversight of complaint outcomes, which offer such valuable opportunities to learn and improve.

Complaint statistics

Our statistics focus on three key areas that help to assess your organisation's commitment to putting things right when they go wrong:

Complaints upheld - We uphold complaints when we find fault in an organisation's actions, including where the organisation accepted fault before we investigated. We include the total number of investigations completed to provide important context for the statistic.

Compliance with recommendations - We recommend ways for organisations to put things right when faults have caused injustice and monitor their compliance with our recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the organisation upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit organisations that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your organisation with similar authorities to provide an average marker of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data, and a copy of this letter, will be uploaded to our interactive map, [Your council's performance](#), on 27 July 2022. This useful tool places all our data and information about councils in one place. You can find the detail of the decisions we have made about your Council, read the public reports we have issued, and view the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

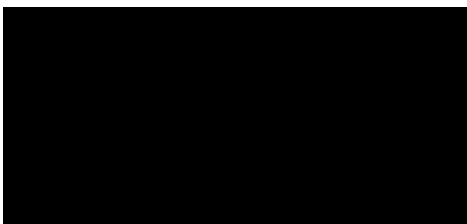
Supporting complaint and service improvement

I know your organisation, like ours, will have been through a period of adaptation as the restrictions imposed by the pandemic lifted. While some pre-pandemic practices returned, many new ways of working are here to stay. It is my continued view that complaint functions have been under-resourced in recent years, a trend only exacerbated by the challenges of the pandemic. Through the lens of this recent upheaval and adjustment, I urge you to consider how your organisation prioritises complaints, particularly in terms of capacity and visibility. Properly resourced complaint functions that are well-connected and valued by service areas, management teams and elected members are capable of providing valuable insight about an organisation's performance, detecting early warning signs of problems and offering opportunities to improve service delivery.

I want to support your organisation to harness the value of complaints and we continue to develop our programme of support. Significantly, we are working in partnership with the Housing Ombudsman Service to develop a joint complaint handling code. We are aiming to consolidate our approaches and therefore simplify guidance to enable organisations to provide an effective, quality response to each and every complaint. We will keep you informed as this work develops, and expect that, once launched, we will assess your compliance with the code during our investigations and report your performance via this letter.

An already established tool we have for supporting improvements in local complaint handling is our successful training programme. We adapted our courses during the Covid-19 pandemic to an online format and successfully delivered 122 online workshops during the year, reaching more than 1,600 people. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld



0% of complaints we investigated were upheld.

This compares to an average of **51%** in similar organisations.

0
upheld decisions

Statistics are based on a total of **5** investigations for the period between 1 April 2021 to 31 March 2022

Compliance with Ombudsman recommendations

No recommendations were due for compliance in this period

Satisfactory remedy provided by the organisation

The Ombudsman did not uphold any detailed investigations during this period

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Reference	Authority	Category	Received
20014395	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	13/04/21
21000068	Tonbridge and Malling Borough Council	Planning & Development	06/04/21
21000103	Tonbridge and Malling Borough Council	Planning & Development	06/04/21
21000779	Tonbridge and Malling Borough Council	Benefits & Tax	19/04/21
21000802	Tonbridge and Malling Borough Council	Planning & Development	05/05/21
21003370	Tonbridge and Malling Borough Council	Other	08/06/21
21004696	Tonbridge and Malling Borough Council	Planning & Development	30/06/21
21006398	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	29/07/21
21006959	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	10/08/21
21007288	Tonbridge and Malling Borough Council	Planning & Development	13/01/22
21009348	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	18/10/21
21009419	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	28/09/21
21010115	Tonbridge and Malling Borough Council	Housing	11/10/21
21012137	Tonbridge and Malling Borough Council	Benefits & Tax	03/02/22
21013456	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	07/12/21
21013847	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	15/12/21
21013910	Tonbridge and Malling Borough Council	Planning & Development	16/12/21
21014006	Tonbridge and Malling Borough Council	Highways & Transport	20/12/21
21017181	Tonbridge and Malling Borough Council	Planning & Development	21/02/22
21017820	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	04/03/22

Reference	Authority	Category	Decided	Decision	Decision Reason	Remedy	Service improvement recommendations
20010852	Tonbridge and Malling Borough Council	Planning & Development	12/08/21	Not Upheld	no mal		
20012528	Tonbridge and Malling Borough Council	Planning & Development	23/07/21	Not Upheld	no mal		
20014395	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	13/04/21	Referred back for local resolution	Premature Decision - advice given		
21000068	Tonbridge and Malling Borough Council	Planning & Development	09/12/21	Not Upheld	no mal		
21000103	Tonbridge and Malling Borough Council	Planning & Development	27/08/21	Not Upheld	no mal		
21000779	Tonbridge and Malling Borough Council	Benefits & Tax	21/05/21	Referred back for local resolution	Premature Decision - referred to BinJ		
21000802	Tonbridge and Malling Borough Council	Planning & Development	24/01/22	Not Upheld	no mal		
21003370	Tonbridge and Malling Borough Council	Other	08/06/21	Advice given	Signpost - go to complaint handling		
21004696	Tonbridge and Malling Borough Council	Planning & Development	25/08/21	Closed after initial enquiries	Not warranted by alleged injustice		
21006398	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	29/07/21	Referred back for local resolution	Premature Decision - advice given		
21006959	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	04/10/21	Closed after initial enquiries	Not warranted by alleged injustice		
21007288	Tonbridge and Malling Borough Council	Planning & Development	14/02/22	Closed after initial enquiries	26B(2) not made in 12 months		
21009348	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	06/01/22	Closed after initial enquiries	Not warranted by alleged mal/service failure		
21010115	Tonbridge and Malling Borough Council	Housing	07/12/21	Closed after initial enquiries	Not warranted by alleged mal/service failure		
21012137	Tonbridge and Malling Borough Council	Benefits & Tax	17/03/22	Advice given	Previously considered and decided		
21013910	Tonbridge and Malling Borough Council	Planning & Development	16/12/21	Referred back for local resolution	Premature Decision - advice given		
21014006	Tonbridge and Malling Borough Council	Highways & Transport	01/02/22	Closed after initial enquiries	26(6)(a) tribunal TPT/PATAS		
21017181	Tonbridge and Malling Borough Council	Planning & Development	21/02/22	Referred back for local resolution	Premature Decision - advice given		
21017820	Tonbridge and Malling Borough Council	Environmental Services & Public Protection & Regulation	22/03/22	Closed after initial enquiries	Not warranted by alleged injustice		

Reference	Authority	Category	Decided	Remedy	Remedy Target Date	Remedy Achieved Date	Satisfaction with Compliance
No compliance data recorded during the period							

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Executive Decisions Record - July 2022

Decision Number	Title	Cabinet Member	Date of Decision	Date Published	Call-in period ends	Called in	Scrutiny Committee Consideration	Referred back to Cabinet	Referred back to Council	Council referred to Cabinet	Date Decision Effective
D220057CAB	UK Shared Prosperity Fund	Cabinet	05.07.22	7.07.22	14.07.22						15.07.22
D220058CAB	Tonbridge Town Centre Asset Review - Phase 1 report	Cabinet	05.07.22								
D220059CAB	Housing Strategy 2022/27	Cabinet	05.07.22								
D220060CAB	Financial Planning and Control	Cabinet	05.07.22								
D220061CAB	Climate Change Action Plan; Yr 2 progress report and proposed yr 3 actions	Cabinet	05.07.22								
D220062MEM	Housing Delivery Test - Action Plan Update	Strategic Planning & Infra.	06.07.22	08.07.22	15.07.22						16.07.22
D220063MEM	Admin. error in respect of consecutive numbering										
D220064MEM	Closure of Blue Bell Hill Commuter Car Park at the weekends	Community Services	20.07.22	20.07.22	27.07.22						
D220065MEM	Purchase of NEC Form Designer software	Finance, Innovation & Property	19.07.22	25.07.22	01.08.22						
D220066MEM	TMLT Utility Costs sharing agreement	Finance, Innovation & Property	12.07.22	25.07.22	01.08.22						

Decision pending	Call in period	Key Decision
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Executive Decisions Record - August 2022

Decision Number	Title	Cabinet Member	Date of Decision	Date Published	Call-in period ends	Called in	Scrutiny Committee Consideration	Referred back to Cabinet	Referred back to Council	Council referred to Cabinet	Date Decision Effective
D220067CAB	Household Support Fund	Cabinet	04.08.22	05.08.22	12.08.22						15.08.22
D220068MEM	Business Rates Local Scheme Decision	Finance, Innovation and Property	05.08.22	05.08.22	12.08.22						16.08.22
D220069MEM	Debts for Write Off	Finance, Innovation and Property	02.08.22	05.08.22	12.08.22						
D220070MEM	Rural Rate Relief - Rural settlement list	Finance, Innovation and Property	05.08.22	05.05.22	12.08.22						
D220071MEM	Appointment of National Enforcement Solutions	Technical and Waste Services	10.08.22	11.08.22	18.08.22						19.08.22
D220072MEM	BC Flag Protocol	Community Services	11.08.22	12.08.22	19.08.22						20.08.22
D220073MEM	Grounds Maintenance	Community Services	03.08.22	17.08.22	24.08.22						25.08.22
D220074MEM	Medway Valley Countryside Partnership - Memorandum of Understanding	Community Services	30.08.22	31.08.22	07.09.22						08.09.22
D220075MEM	Council Tax Debts for Write off	Finance, Innovation and Property	31.08.22	31.08.22	07.09.22						08.09.22
D220076MEM	Housing Benefits Debts for Write Off	Finance, Innovation and Property	31.08.22	31.08.22	07.09.22						08.09.22
Decision pending	Call in period	Key Decision		Private							

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Executive Decisions Record - September 2022

Decision Number	Title	Cabinet Member	Date of Decision	Date Published	Call-in period ends	Called in	Scrutiny Committee Consideration	Referred back to Cabinet	Referred back to Council	Council referred to Cabinet	Date Decision Effective		
D220077MEM	Household Support Fund Additional Grant - Coats for Kids	Finance, Innovation and Property	30.08.22	06.09.22	13.09.22						14.09.22		
D220078MEM	Appointment of Climate Change Officer	Environment and Climate Change	07.09.22	7.09.22	14.09.22						15.09.22		
D220079CAB	Statement of Community Involvement	Cabinet	07.9.22	09.09.22	16.9.22						17.09.22		
D220080CAB	Regulation 18 Local Plan												
D220081CAB	Housing Allocations Scheme Review												
D220082CAB	Highway Officer attendnace at Area Planning Committees												
D220083CAB	Executive Scrutiny Protocol												
D220084CAB	East Peckham Allotments - CPO												
D220085CAB	CV19 Additional Relief Fund Policy												
D220086CAB	Saturday Freighter Service												
D220087CAB	Household Bulky Refuse Collection												
D220088CAB	Gibson Building - High Level Options for Long Term Office Accommodation												
D220089MEM	Proposed Grant of New Lease of Unit 29 Martin Square	Finance, Innovation and Property	16.09.22	20.09.22	27.09.22						28.09.22		
D220090MEM	Internal Communcations - Peer Review	Finance, Innovation and Property	26.9.022	26.09.22	3.10.22						4.10.22		
D220091MEM	Procurement Climate Change Position Statement	Environment and Climate Change	27.09.22	27.09.22	4.10.22						5.10.22		
Decision pending	Call in period	Key Decision		Private									

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OVERVIEW AND SCRUTINY COMMITTEE

WORK PROGRAMME 2022/23

Standing items: (pending approval of Executive-Overview and Scrutiny Protocol on 7.9.22)

- **Record of Executive (Cabinet and Cabinet Member) Decisions Taken;**
- **Record of Officer Decisions Taken (If any);**
- **Notice of Forthcoming Key Decisions;**
- **Work Programme 2022/23 (information item).**

Meeting Date	Matter for Discussion	Requested by:	Director/Officer
6 October 2022	Planning Enforcement	Carried over	Director of Planning Housing and Environmental Health/Head of Planning
	Annual report of Local Government Ombudsman		Chief Executive
17 November 2022	Leisure Trust: <ul style="list-style-type: none"> • Represent value for money • Savings achieved over the long term 	Cllr Base	
26 January 2023	Revenue Estimates	Overview and Scrutiny Committee	
	Capital Plan		

Item	Meeting Date	Papers published	Director/Officer
26 January 2023	S106 Contributions	Cllr Oakley	Director of Planning, Housing and Environmental Health
6 April 2023	Mandatory and non-mandatory services	Overview and Scrutiny Committee	Policy, Scrutiny and Communities Manager

Agenda Item 11

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 12

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 13

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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