

Planning Enforcement

Review of the Enforcement Plan and performance and service delivery update.

Introduction to enforcement plan review

In April 2017 Development Control Committee formally endorsed the Borough's new Planning Enforcement Plan. The Plan came into effect in September 2017 and set out that a review of the plan was proposed for 2019. The main aspirations of the Plan were to:

- Improve the provision of publicly available information, both in the Enforcement Plan document itself and on the Council's web pages, to enable residents to look into their issue themselves where possible and to clarify whether it was actually a planning matter which enforcement officers could help with.
- Significantly reduce instances of logging and investigation of complaints which were not planning related or where there was clearly no planning breach, freeing up enforcement officers to more effectively use their resources to resolve genuine enforcement issues more efficiently and to undertake more proactive enforcement/regeneration work.
- Improve procedures and introduce a new complaint form to ensure that investigating enforcement officers have the necessary information to 'hit the ground running' once a new case is logged, thereby reducing response times for residents.

A previous review of the service was undertaken in 2019 and sought to understand the impacts of the introduction of the plan. This demonstrated that there has been a drop in the number of enforcement complaints relating to issues which do not represent a breach of planning control. The aspiration of the plan was to reduce the amount of unproductive

paperwork being carried out by Enforcement officers, in order to free up resources for more positive and proactive enforcement activity.

CASES OPENED:

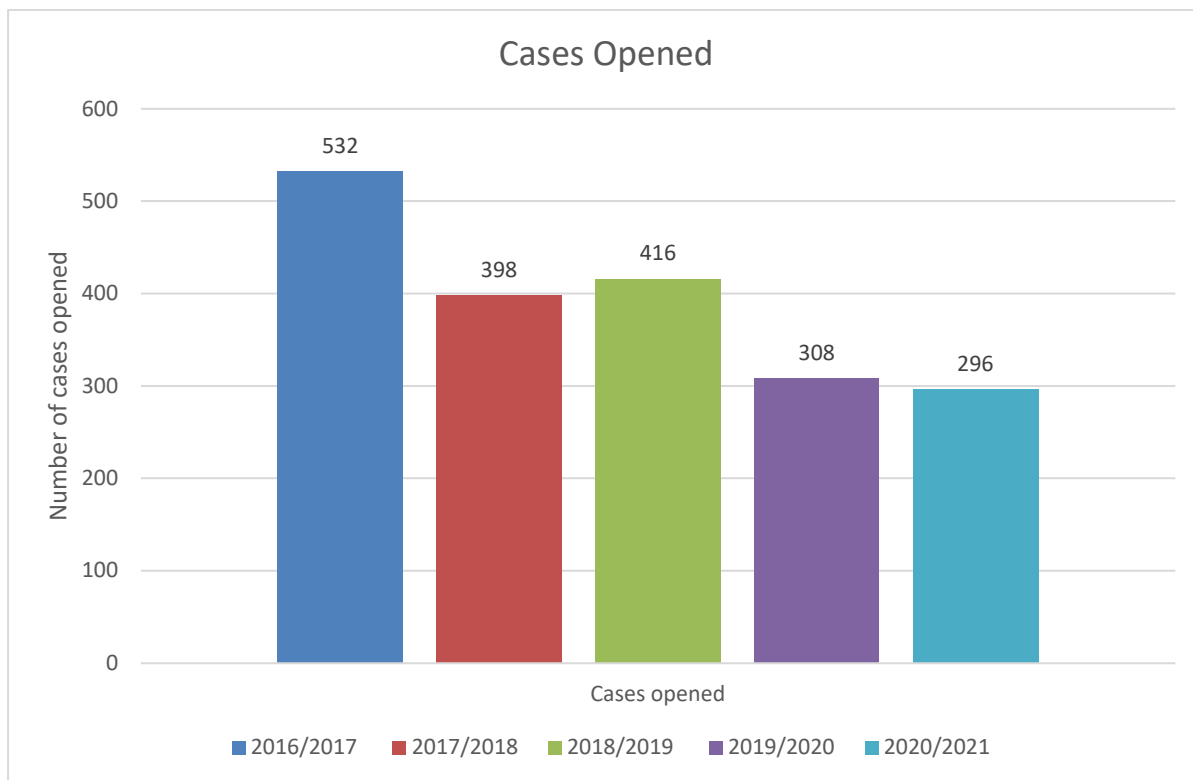


Table 1 - Number of enforcement complaints received per annum

Table 1 demonstrates that there has been a steady decline in the number of enforcement cases opened since the introduction of the Enforcement Plan. This does indicate that the introduction of the plan, and the requirement for an enforcement complaint has reduced the number of frivolous cases, which was an objective. However, further consideration is required as to whether the requirement for a form, and the guidance contained within the plan has also acted as a barrier for the submission of genuine enforcement complaints.

CASES CLOSED:

No breach cases:

Two reasons for cases being closed with no further action are where, following an investigation, the Local Planning Authority determine that no breach of planning has occurred. Since the introduction of the plan a brief snapshot of the circumstances that have led to a closure reason of “no breach” are as follows:

- Breach of planning has occurred for more than 10 years

- Development undertaken in accordance with the Town and Country Planning (General Permitted Development) Order 2015.
- No evidence of breach of conditions occurring
- Works being undertaken in accordance with planning permission
- Complaint relates to Council Owned land and therefore passed onto relevant department
- Renovations to property not considered to be a change of use
- Use of dwelling as Small HMO less than 6 people and accords with Town and Country Planning (General Permitted Development) Order.

The second reason being where the matter is not considered to be a planning issue. Since the introduction of the enforcement plan, a number of reasons for cases being closed due to the complaint not being a planning manner have included the following;

- Concerns with pests
- Neighbouring fence not replaced
- Queries regarding reinstatement of Public Right of Way
- Growing of trees (pleaching)
- Overhanging gutter (Civil matter)

The following table (table 2) reflects the number of cases closed per annum, that have been closed as the development was not a breach of planning, or the complaint was not planning related.

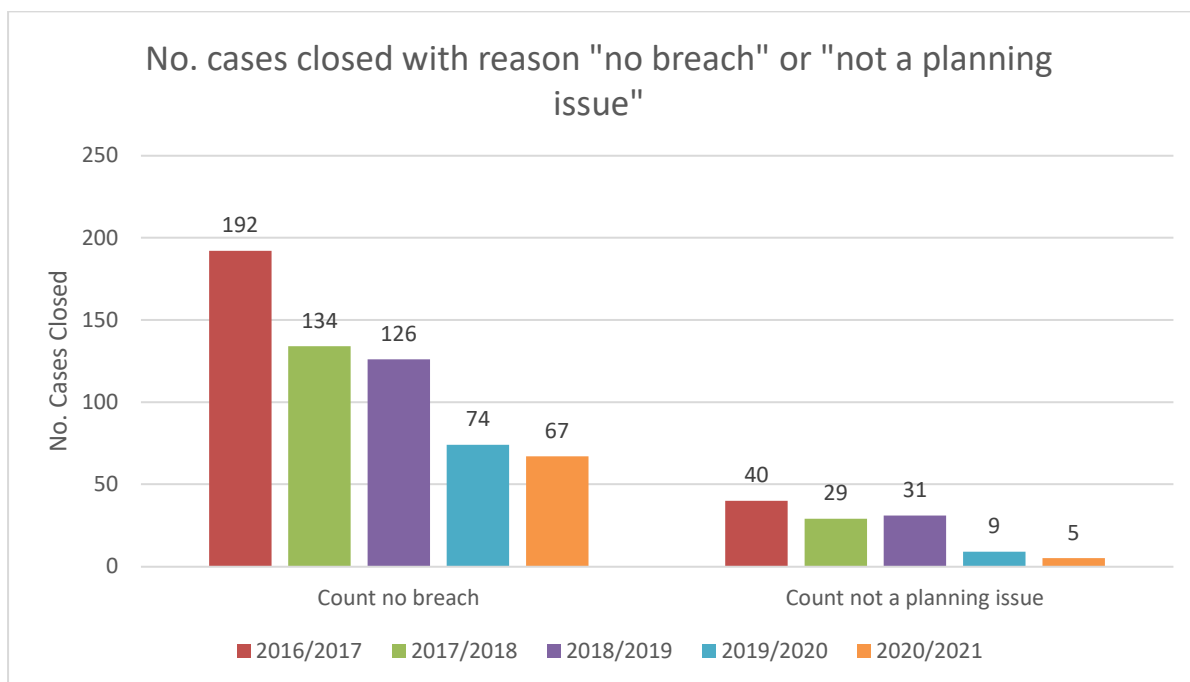


Table 2 - No. of cases closed per annum with reason "no breach" or "not a planning issue"

Table 2 indicates that there has been a reduction in the number of complaints submitted which, upon investigation, are found to not be a breach of planning (67 during 2020/21 compared to 192 in 2016/17).

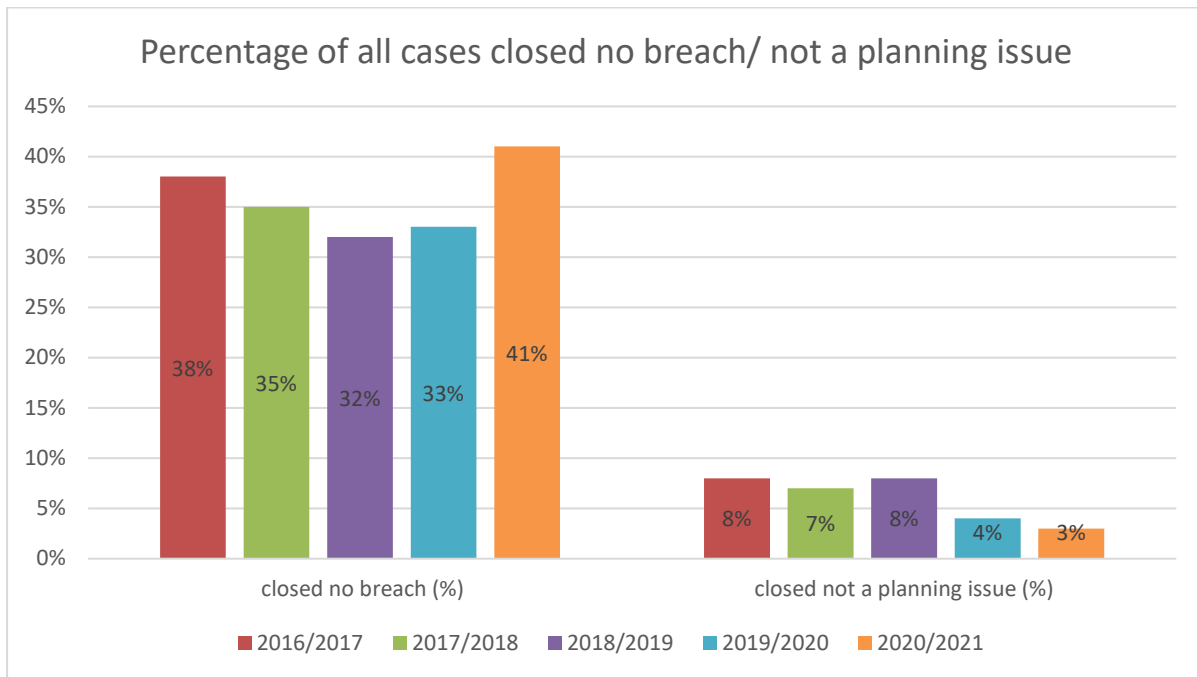


Table 3- Percentage of cases closed by reason "No breach" or "not a planning issue"

However, when comparing this number as a percentage of all cases closed, as seen in table 3 (above), it does appear that the introduction of the enforcement plan has not resulted in any significant changes in terms of the overall percentage of cases being investigated and closed where there is no planning breach following investigation. This could mean that the enforcement plan has also resulted in a reduction in enforcement complaints being submitted relating to actual breaches of planning.

Positively, as seen in table 2 and 3, there has been a consistent decline in the number of cases closed which have not been a planning issue, falling from 8% prior to the introduction of the plan, to 3% of cases in 2020/2021. This demonstrates that the introduction of the enforcement plan and enforcement complaint form has had a positive outcome in reducing the number of frivolous complaints.

The tables above demonstrates that the proportion of cases closed as a result of 'no breach of planning' remains consistent, despite numbers of enforcement complaints dropping overall. When a valid enforcement complaint is received it will be categorised into a "type" of enforcement, this enables the enforcement service to better understand the number and types of development which are investigated, it is of note that the

category “enforcement” includes developments which do not easily fall into a category (such as erection of stables or development on land with no identifiable use) . Table 4, below, shows the greatest number of enforcement complaints which are closed as a result of “no breach” remains highest in respect of those related to domestic properties.

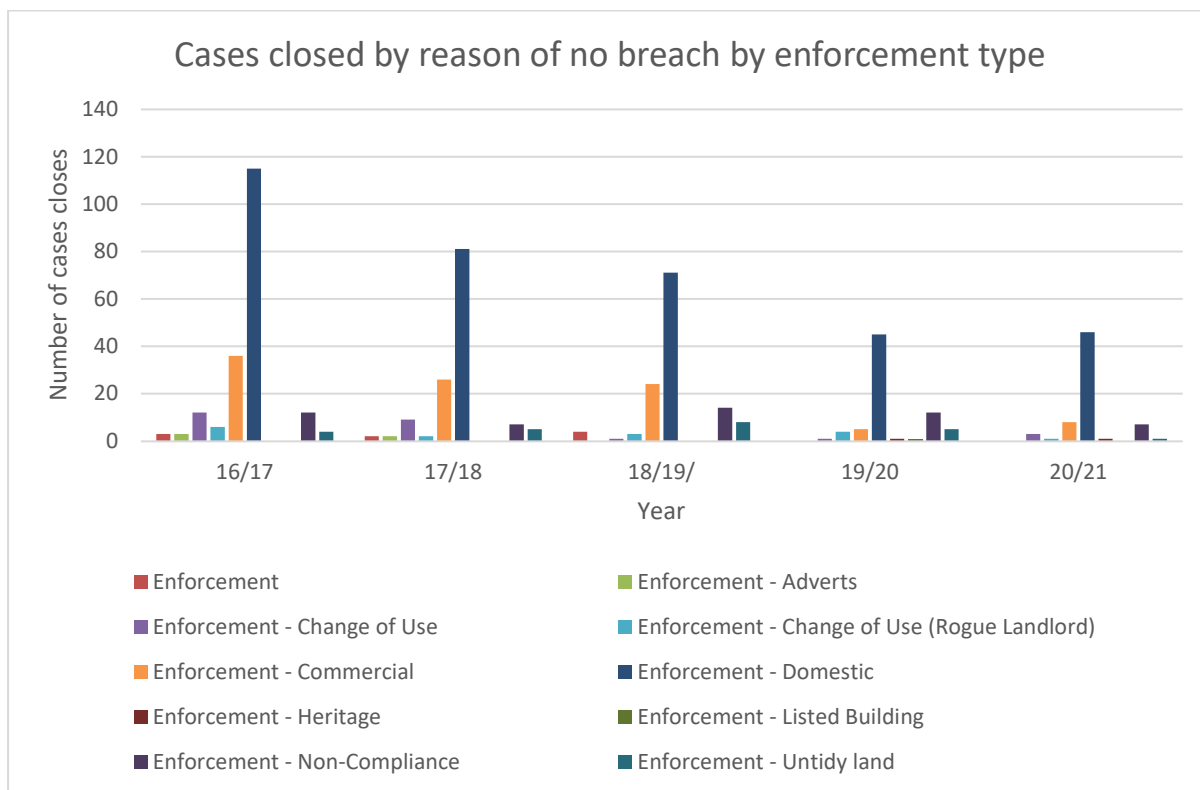


Table 4 - cases closed for reason of "no breach" by enforcement type

These numbers are likely due to the extent of Permitted Development rights afforded to dwellings through the Town and Country Planning (General Permitted Development) Order 2015. As such it is inevitable that the number of cases closed as a result of the development not being in breach of planning will remain highest in respect of domestic properties. Noting the uplift in investigations concluding in a “no breach” during 2020/21, this may be linked with increased Permitted Development rights afforded to homeowners, alongside the change in lifestyles and home working arising from the Covid-19 pandemic which could have potentially led to homeowners extending homes.

The enforcement complaint form does already direct members of the public to details of permitted development rights in order to assist members of the public in understanding whether the breach of planning may relate to something which has the benefit of Permitted Development before an enforcement complaint is submitted. Furthermore, efforts were also made to facilitate officers undertaking desk-based assessments

avoiding unnecessary site visits, which, where there is no breach of planning, or the complaint relates to non-planning matters are a use of resource that could be directed to higher priority cases, as such there is a requirement for enforcement complaints to be submitted with photographs.

Currently, domestic extensions are a priority 2, and as such the intention is to visit sites within 10 days of receipt of a valid complaint. However, on the basis of the above evidence it is considered that given the high numbers of cases closed where no breach of planning has occurred, alterations and extensions to domestic properties should be moved to Priority 3, which requires a site visit to be conducted within 15 days of receipt of a valid complaint.

Given the number of complaints investigated that resolve in no breach being identified it is also considered that the current timescale of 28 days for an initial update to be provided to a complainant with a further update at 56 days is unnecessarily burdensome. As such it is considered that the requirement for officers to update complainant after 28 days will be omitted, and instead officers will update complainants once a decision as to what action will be taken has been determined.

Furthermore, the enforcement complaint form will be updated to include specific reference to key aspects of the General Permitted Development Order, in order to assist officers with determining whether the works will likely have been constructed in accordance with the GPDO.

The suggested changes will ensure that officers are better resourced to respond to and investigate complaints where there is a greater certainty that a breach of planning has occurred and potentially greater harm arising as a result.

COUNCILLOR ENQUIRIES:

The Enforcement Plan has sought to encourage a consistent and clear complaints process regarding alleged breaches of planning from the public. There will likely be many instances where Councillors become involved in enforcement cases. However, a review of cases indicates that during 2019/2020 there were 20 complaints submitted and in 2020/2021 there were 22 cases submitted which were based solely on a complaint from

an elected member. In 100% of these cases there was no formal Enforcement Complaint form submitted.

As explained above, the use of the enforcement complaint form is a tool to assist officers in undertaking a desk assessment prior to a site visit to determine whether a breach of planning has occurred. The enforcement complaint form, also assists the Local Planning Authority is being able to demonstrate harm and public interest should matters ever escalate to prosecution.

In respect of consistency, fairness and to assist the efficiency investigations elected members should also endeavour to submit a formal complaint form when raising an enforcement issue. It is proposed efforts are made to inform/remind members of this process and how to access and complete the form. This would also assist with understanding of the process when they are advising or directing constituents to the Enforcement Complaint Form. It would also assist with Councillors own commitments and pressures as they will not be required to keep constituents updated on enforcement matters as the enforcement team will be able to contact complainants directly for updates.

Impact of the pandemic on enforcement:

The enforcement team have faced a notable challenge since the start of 2020 in light of the pandemic. Due to government restrictions the enforcement team were faced with greater challenges in accessing sites to conduct investigations. Ensuring that officers and the public were safe during the unprecedented times was of upmost priority for the council. National guidance has also been issued to enforcement local planning authorities to have regard for changing business practices during the pandemic and have issued a variety of temporary exemptions from planning consent over this period.

Phase 1 performance:

When a planning enforcement enquiry is received, the case officer carries out an initial 'Phase 1' investigation. This is to establish whether or not a breach is occurring and if so, to establish the most appropriate means of addressing the issue. Once this initial investigation is concluded, where necessary the case officer escalates the case to 'Phase 2' whilst more formal action is progressed. For example, where the initial investigation identifies a breach and the landowner is invited to submit a retrospective planning application for consideration, once the application is received the initial enforcement

investigation is concluded, and the case therefore progresses to 'Phase 2' status while the application is considered and determined.

- In 2019/2020 308 enforcement complaints were logged.
- In 2020/2021 296 enforcement complaints were logged.

Below is a breakdown of the outcomes of Phase 1 investigations during 2019/2020.

Cases resolved and closed at Phase 1 Stage:

Reason for Closure	Cases closed	
	2019/2020	2020/2021
Breach Ceased	41	19
No Breach	77	54
Not a Planning issue	9	8
Not expedient to take Action	37	16
Resolved by Negotiation	6	3
Planning application granted	3	3

Phase 1 investigations completed and progressed to Phase 2 for further action.

Reason for Closure	Cases Closed	
	2019/2020	2020/2021
Informal compliance period set	1	0
Notice served	12	7
Planning application submitted	49	43
Legal Instructed*	0	1

*This applies to cases where there is an immediate offence, or where court intervention is required (e.g Planning Injunction).

Enforcement Fee Income

Retrospective planning applications are subject to the same application fees as conventional applications. Therefore, the submission of retrospective applications

following investigation by Enforcement Officers results in additional funds coming into the Council which would not otherwise be obtained. During the 2019-2020 financial year, retrospective planning applications attracted **£7,498**, and during 2020/2021 **£4,678** in application fees, which have contributed to the overall Planning budget.

Furthermore, when an enforcement notice appeal is made to the Planning Inspectorate, a fee may be required if a Ground (a) appeal is made. When a notice is appealed there are 7 potential grounds that this appeal can be made, Ground (a) appeals are where it is considered by the appellant that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed). In 2019/20 4 appeals under Ground A were made generating an income of £2160, whilst in 2020/21 £924 was received from Ground 'a' appeals. The enforcement service therefore continues to generate income.

Service of enforcement notices

The Council's current Enforcement Plan sets out that when an investigation establishes that a planning breach is taking place, Enforcement officers will aim to resolve the issue by a number of means (e.g through submission of an application or through informal negotiation), and formal enforcement action will only be taken as a last resort. This action must be proportionate to the scale of the scale of the breach and the harm caused. In 2019/2020, it was necessary to serve formal enforcement notices on **24** occasions, details of which are set out below:

Enforcement Notice.....	17
Breach of Condition Notice.....	2
Listed Building Enforcement Notice.....	1
Section 215 (Tidy up) Notice.....	4

In 2020/2021, the enforcement team ceased the service of formal enforcement notices when the pandemic commenced. This was as a result of Government restrictions, meaning that any formal action taken would unlikely have been able to be resolved, or in seeking to comply with the notice. Other Government Legislation may have been breached, and as such formal action was not warranted. This approach was taken until the first National Lockdown had ceased and as such no notices were until July 2020.

Following this, it was necessary to serve formal enforcement notices on **7** occasions, details of which are set out below:

Enforcement Notice.....	5
Section 215 (Tidy up) Notice.....	1
Tree Replacement Notice.....	1

This is a significant drop in the number of cases that have resulted in formal action being taken. However, in light of government restrictions, the Planning Service have had to ensure that the interests and health and safety of all interested parties (including those affected by a breach of planning) were prioritised. Reflective of this, in the 6 months since April 2021 formal action has already matched the year 2019/2020 as government restrictions have eased.

Furthermore, Government figures indicate that there has been a reduction in the number of notices served nationally, with 1,000 less enforcement notices being served in 2020/2021 than in 2019/20. Furthermore, across England during 2020/21 the lowest amount of Breach of Condition Notices were served since records began.

Formal action is an important element of the Planning Service and ensures that trust in the Council's Planning Service is maintained. Further work is required to improve the Council's policies in taking formal action, including the period of time and opportunities afforded prior to taking formal action. This will not only give greater clarity to complainant, but those individuals who have undertaken a breach in order to ensure that any required actions are undertaken expeditiously.

As such the following additional guidance is proposed for inclusion within the Enforcement Plan:

- Where a breach is identified and would likely be acceptable with conditions a planning application will be invited. If an application is not submitted within a reasonable timeframe then formal action will be considered.
- Where a breach is identified but could be mitigated with alterations these will first be negotiated informally. If these works to resolve or mitigate the breach are not undertaken within a reasonable period then formal action will be considered.

Prosecution proceedings

Wherever possible, the enforcement team ensures that all enforcement notices are complied with. However, where a notice is not complied with within the given time period, the Authority has the power, when it is in the public interest, to pursue prosecution proceedings. In 2019/2020, 1 prosecution was brought in respect of the breach of a Section 215 Notice, this resulted in the defendant being found Guilty and fined **£200** ordered to pay costs of **£655** and a victim surcharge of **£30**. Whilst no prosecutions were taken forward during 2020/2021, the Council did seek 1 Court Injunction related to unauthorised works in proximity of protected trees, in this case the Courts Granted the Planning Injunction and the defendant was required to pay the Council's costs of the claim in the sum of **£3,439**. Where prosecution proceedings are successful, the enforcement team continues to seek compliance with the notice and where necessary pursues repeat prosecutions.

Further policies are considered appropriate to influence the process for the Local Planning Authority in determining whether Prosecution is necessary and expedient. The following additional guidance in respect of prosecution proceedings will therefore be included within the enforcement plan:

Does the LPA have sufficient evidence?

- Is there sufficient evidence to provide a realistic prospect of conviction on each charge?
- Consider what the defence case may be and how it is likely to affect the prospects of conviction.
- Can the evidence be used in court?
 - o Could the evidence be excluded by the court?
 - o Is the evidence reliable?
 - o Is the identification of the defendant reliable?
 - o Are the witnesses reliable and credible?

Is prosecution in the public interest?

Examples of public interest may be:

- Conviction likely to result in a significant sentence
- The offence was pre-meditated

- Prosecution would have a significant positive impact on maintaining community confidence in planning
- There are grounds for believing that the offence is likely to continue or be repeated
- There are previous relevant previous convictions or simple cautions
- The offence was committed in order to facilitate more serious offending
- Advantage was taken of a vulnerable victim

Common public interest factors tending against prosecution:

- The court is likely to impose a nominal penalty
- The seriousness and consequences of the offence can be dealt with by a simple caution
- Offence was committed as a result of a genuine mistake or misunderstanding (balanced against seriousness)
- Loss/harm is minor and result of single incident
- Defendant has put right the loss or harm
- Long delay between offence and report/trial (with exceptions)
- Prosecution will be likely to have serious consequences on a victims health
- Defendant suffering from significant mental or physical ill health (balanced against seriousness and risk of offence being repeated)

Summary and Conclusions

Enforcement of planning control remains a high priority for Dudley MBC and underpins the integrity of the planning system within the Borough. The Council envisages that the new, streamlined methods of working adopted under the Enforcement Plan will enable the Planning Enforcement Team to continue to carry out this important work more efficiently in future. The performance statistics reported above relating to 2019/2020 and 2020/2021 are considered to indicate the high level of service provided to residents over the past year.

A number of minor changes to the Enforcement Plan are required in order to assist the Planning Enforcement team in targeting resources towards resolving the highest priority enforcement complaints, where the greatest harm is arising as a result of breaches of planning. The amendments to the plan are summarised as follows:

- Enforcement complaints related to domestic properties to be moved from priority 2 to priority 3 cases.
- Remove requirement for officers to provide updates to complainants after 28 days and 56 days, and instead officers to update complainants as soon as action agreed.
- Additional guidance to be included related to the steps that will be taken prior to formal action being taken.
- Additional guidance as to how the Local Planning Authority will determine whether prosecution action is expedient.

Going forward, the team will continue to work on positive and proactive enforcement based activities. For example, more project-based regeneration work, using Section 215 notices, direct action and enforced sale proceedings to bring long-term problem sites back into a positive use, and the pursuit of further POCA claims to recover funds illegally appropriated by rogue landlords and other landowners. This will enable the service to continue to make its contribution to achieving the vision set out in the Council Plan and improving the Borough for its residents.