

PERTH AND KINROSS COUNCIL
ENVIRONMENT AND INFRASTRUCTURE COMMITTEE

7 November 2018

ANNUAL PLANNING ENFORCEMENT REPORT 2017/18

Report by Executive Director (Housing and Environment) (18/361)

This report analyses performance within the Planning Enforcement function of the Planning Service for the year 2017/18. In addition, examples of best practice developed and undertaken within the team are highlighted. It also seeks Committee approval for the future reporting of performance.

1. BACKGROUND / MAIN ISSUES

- 1.1 The sixth Scrutiny Committee Review selected Planning Enforcement as the topic of review based on the potential for the review to result in recommendations for change that would deliver measureable improvements. The final report concluding the review was approved by the Scrutiny Committee on 21 September 2016 ([Report Number 16/397](#) refers).
- 1.2 The Scrutiny Committee Review report of Planning Enforcement concluded that:

“This has been one of the more involved reviews which we have undertaken. We are aware that the recommendations which we are making are limited but this is because we have not found a need for substantial change.”
- 1.3 Six recommendations were made in this review. Recommendation 3 specifically identified the establishment of an Annual Planning Enforcement Report, as a means to report the work of the Planning Enforcement team over the preceding year. This report will have the dual benefits of showing the value of the work of the Council’s Planning Enforcement officers, and publicising this work. This will be done through highlighting current work patterns and performance against both national and Council set indicators, as well as undertaking comparison with previous years’ performance to identify any emerging trends.
- 1.4 A final report was presented to Scrutiny Committee on 12 September 2018 recommending that the Sixth Scrutiny Review of Planning Enforcement be concluded ([report number 18/290](#)) following submission of the planning report to the Environment & Infrastructure Committee. Scrutiny Committee agreed to this recommendation.

2. PLANNING ENFORCEMENT PERFORMANCE

Planning Enforcement Performance 2017/18

- 2.1 Enforcement activity performance is reported quarterly to the Scottish Government through the 'Planning Authority Performance Statistics' returns; a process where performance of the Council as Planning Authority is measured against nationally set criteria or 'national headline indicators'. These statistics are, in turn, published cumulatively by the Scottish Government for annual performance statistics, the last of which, for the year 1 April 2017 to 31 March 2018, were published on 24 July 2018.
- 2.2 Performance for enforcement activity is also reported annually through the [Planning Performance Framework \(PPF\)](#). The PPF for 2017/18 was submitted to the Scottish Government for approval on 31 July 2018. The PPF will be reported to the Environment and Infrastructure Committee following receipt of the Scottish Government's completed review, which has been provided in December in previous years. While performance is based on the criteria similar to those in the Government's statistics, the PPF does include additional metrics.
- 2.3 Performance for Perth and Kinross for this period was reported in the PPF as outlined in Figure 1 below. It is highlighted that the 'Cases Taken Up' are the number of formal enquiries we have received and opened as enforcement. In addition, the 'Number of Cases Closed' includes cases opened in previous years.

Figure 1: Enforcement Activity 2017/18

Enforcement Activity – 2017/18	Number
Cases Taken Up	316
Notices Served	27
Reports to Procurator Fiscal	0
Prosecutions	0
Number of Breaches Resolved	149
Number of Cases Closed	353

Source: 2017/18 Annual Planning Performance Framework (PPF)

Planning Enforcement Performance 2013-2017

- 2.4 For comparison, data is provided below for core enforcement activity over the last four reporting years:

Figure 2: Enforcement Activity 2013/14 to 2016/17

Enforcement Activity	2016/17	2015/16	2014/15	2013/14
Cases Taken Up	296	296	361	298
Notices Served	32	23	37	29
Reports to Procurator Fiscal	0	0	0	2
Prosecutions	0	0	0	0
Number of breaches resolved	251	167	212	115

Source: 2016/17; 2015/16; 2014/15; 2013/14 Annual Planning Performance Statistics

Planning Enforcement Annual Trends 2013-2018

- 2.5 The data for the last five years (shown in Figures 1 and 2) identifies relative consistency in the number of cases taken up, with a noticeable peak in 2014/15. The number of formal notices served under powers available within the Town and Country Planning (Scotland) Act 1997 or the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 have a similar correlation to the case numbers. Activity for serving notices peaked last year (2017/18). A concerted effort to be more robust in utilising formal powers has been a factor in this. The reporting of breaches or non-compliance with notices to the Procurator Fiscal, and subsequent prosecutions, remains consistently rare; this reflects practice nationally within Planning Authorities.
- 2.6 Figure 3 below illustrates the throughput of enforcement cases in Perth and Kinross as a percentage of cases resolved against cases opened. The national average is also indicated for benchmarking purposes. Generally, an upwards trend is evident in respect of the throughput of case activity over these years. Throughput is the proportion of cases closed in a given year, calculated by dividing the number of cases closed against the number of cases received; which is then represented as a percentage. The comparatively low throughput of cases in 2013/14 (38.6%, compared to the national average of 60.7%) has been improved upon to a peak of 117% of cases in 2017/18. This increase represents a concerted effort to improve performance from previous years, which began with the closure of 'legacy' cases together with general improvements in case management (illustrated by Figure 4 below). It is expected that performance will stabilise going forward, as these old cases have been removed. There is, however, a greater focus on performance to maintain the positive position of keeping pace with workload – with a 100% throughput – and perform well against the national average.

Figure 3: Throughput of Cases 2013/14 – 2017/18

Year	Throughput of Cases	
	Perth & Kinross	National Average (mean)
2017/18	117%	93.0%
2016/17	84.8%	96.5%
2015/16	56.4%	87.3%
2014/15	58.7%	86.5%
2013/14	38.6%	60.7%

Source: 2013/14-2017/18 Annual Planning Performance Statistics

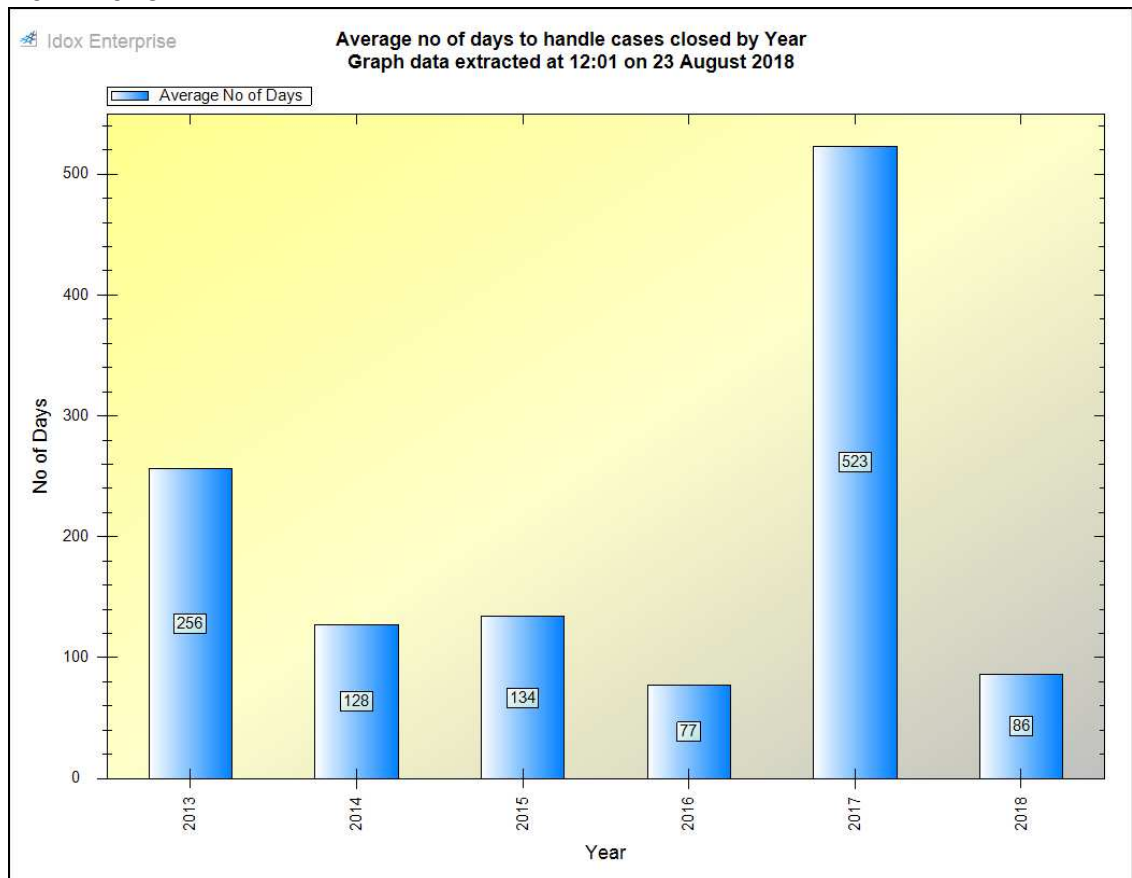
Planning Enforcement Charter

- 2.7 The Council as Planning Authority has a statutory obligation under Section 158A of the Town and Country Planning (Scotland) Act 1997 (as amended) to prepare and renew a Planning Enforcement Charter every two years. The review process is underway for a new charter in 2018/19. The [current Charter](#) was published in October 2016, and was formally approved by the Enterprise and Infrastructure Committee on 11 January 2017 ([report number 17/12](#)). It sets out the Council's approach to planning enforcement to the public by outlining:
- council policy on taking enforcement action, including priorities for action;
 - how members of the public can bring a suspected breach of planning control to the Council's attention; and
 - how any complaint about the Council taking enforcement action can be submitted and outlining how these will be dealt with.
- 2.8 While all observations of suspected breaches reported to the Council will be investigated, and proactive monitoring of planning conditions and obligations will be undertaken, the Council has set priorities for enforcement where they are linked to significant breaches. These include significant environmental impacts; public safety; damage to listed buildings and breaches related to major applications.
- 2.9 As a commitment to providing an effective public service, a number of Customer Standards are outlined in the Charter, including:
- 1) acknowledging observations within 5 working days; and
 - 2) providing a written response to observers within 15 working days to advise what the next steps/action to be taken is.
- 2.10 As advised, preparations are underway for reviewing the Charter for publication from October 2018. The core objectives of the 2016 Charter will continue to be relevant. The opportunity will be taken to reinforce our priorities as well as make the accessibility and accountability for enforcement easier. The proposed revised Enforcement Charter will be reported to the Environment and Infrastructure Committee for approval in January 2019.

Additional Performance Analysis Measures

- 2.11 To complement the objectives of the Scrutiny Review, a number of additional tools for analysis of performance measures have been developed internally, within the case management system used by the team. These provide further insight in to trends, performance and assist in allocating resources. A number of these are explained below.
- 2.12 A core objective, as set in the Charter and Government guidance, is to identify breaches and, where appropriate, resolve them as quickly as possible. Figure 4 illustrates the average number of days taken for the closure of enforcement cases.
- 2.13 It is apparent that a general trend for the reduction of average handling time for the closure of enforcement cases took place between 2012/13 and 2015/16. Over this period, the average timescales fell from 256 days to 77 days. There was a significant spike for increased handling times during 2016/17 (523 days); as discussed in paragraph 2.6, this was due to a concerted effort to close 'legacy' cases. These cases were typically where cases had remained open, largely following staff departures, but where no action would ultimately be taken. The closure of these cases brought the number of active cases for the three officers down substantially with the benefit of allowing a focus on priority cases. After this process, performance for 2017/18 improved and returned to similar levels before 2016, to 86 days. The Scrutiny Review has assisted in beginning this improvement journey and supported the team to continue the review of processes and achieve better performance.
- 2.14 With the focus now being on active cases, officers are able to operate more efficiently and direct efforts more readily to active cases and priorities as identified in the Enforcement Charter.

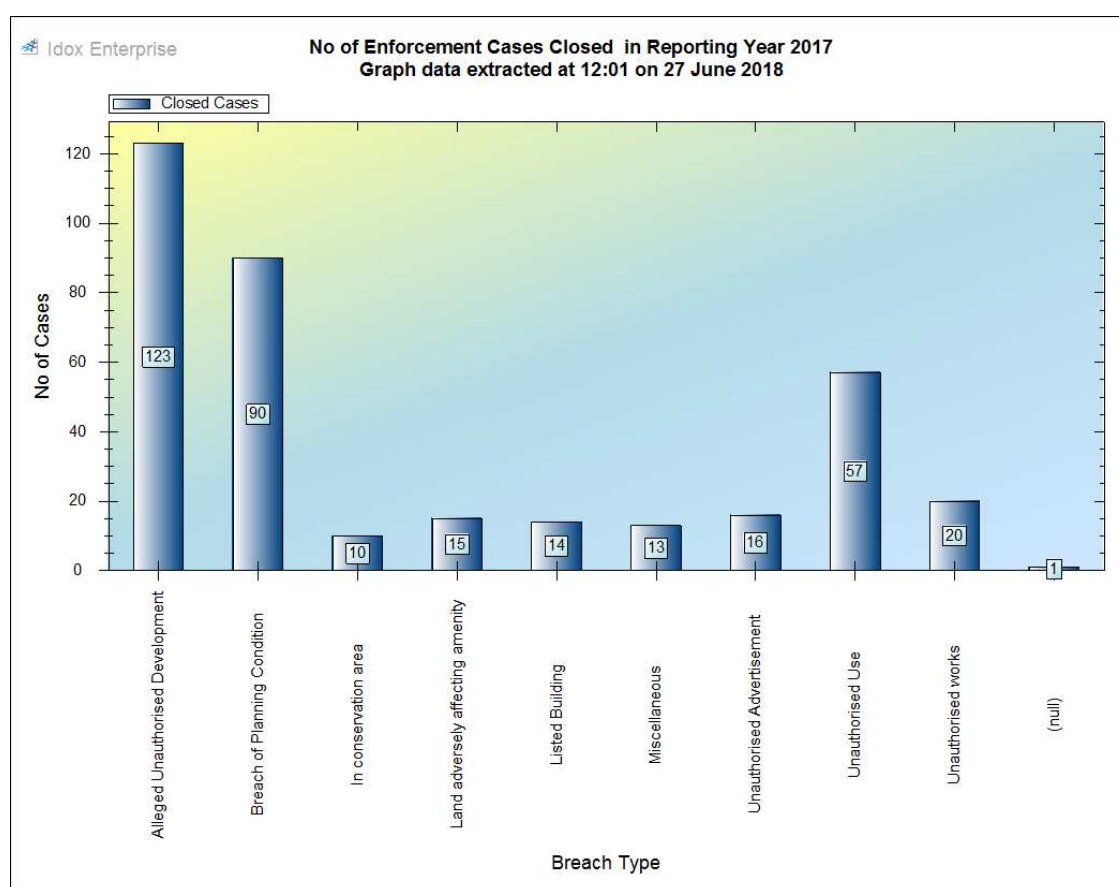
Figure 4: Average Number of Days for Cases Closed 2012/13 to 2017/2018



Current Case Composition and Trends

- 2.15 The composition of cases by type of breach recorded is illustrated by Figure 5. It is evident that the highest type, at just over one third of all cases, relate to alleged unauthorised development (123 of 359 cases or 34.3%). The suspected unauthorised uses of land or buildings are also a significant area of work (57 cases or 15.9%). These case types would mostly relate to claims of no valid permission or consent being in place. Cases for breaches of planning conditions (90 cases or 25.1%) relate specifically to possible breaches for development with permission and, to some extent, this provides a clearer starting point for investigation against approved plans and decision notices. Collectively, these cases are the typical core of investigations undertaken.
- 2.16 While smaller in number, other case types are no less significant. As an example, 24 cases (6.7%) involve possible breaches relating to built heritage - with 10 in Conservation Areas and 14 for works to listed buildings. Such cases are a priority for action within the Enforcement Charter. These cases can be quite significant in terms of the public interest in the breach and the time required resolving the cases. It is highlighted that one enforcement case can cover more than one breach (or type of breaches); these are recorded against the category of breach that is determined to be most appropriate or is the most significant breach type.

Figure 5: Composition of Cases by Breach Types 2017/18



- 2.17 To assist resource planning, an analysis of the geography of enforcement cases has been undertaken. This is expressed in Figure 6, where caseload is separated by Council Ward.
- 2.18 This analysis does illustrate one significant statistic; 74 cases (equating to 20.6% of all cases) have been reported in Ward 8 – Kinross-shire while approximately only 9% of the population of Perth and Kinross live in this ward.
- 2.19 An analysis for each ward has been undertaken in respect of the number of enforcement cases and population is provided in Figure 7 below¹. Also included in Figure 7 is the percentage of all planning (and other) applications; to provide a comparison for enforcement activity against development activity.

¹ As noted in Figure 7, 13 cases, which represents a 3.6% share of the total, omitted to record a ward or were cases that covered more than one ward.

Figure 6: Geography of Cases by Council Ward 2017/18

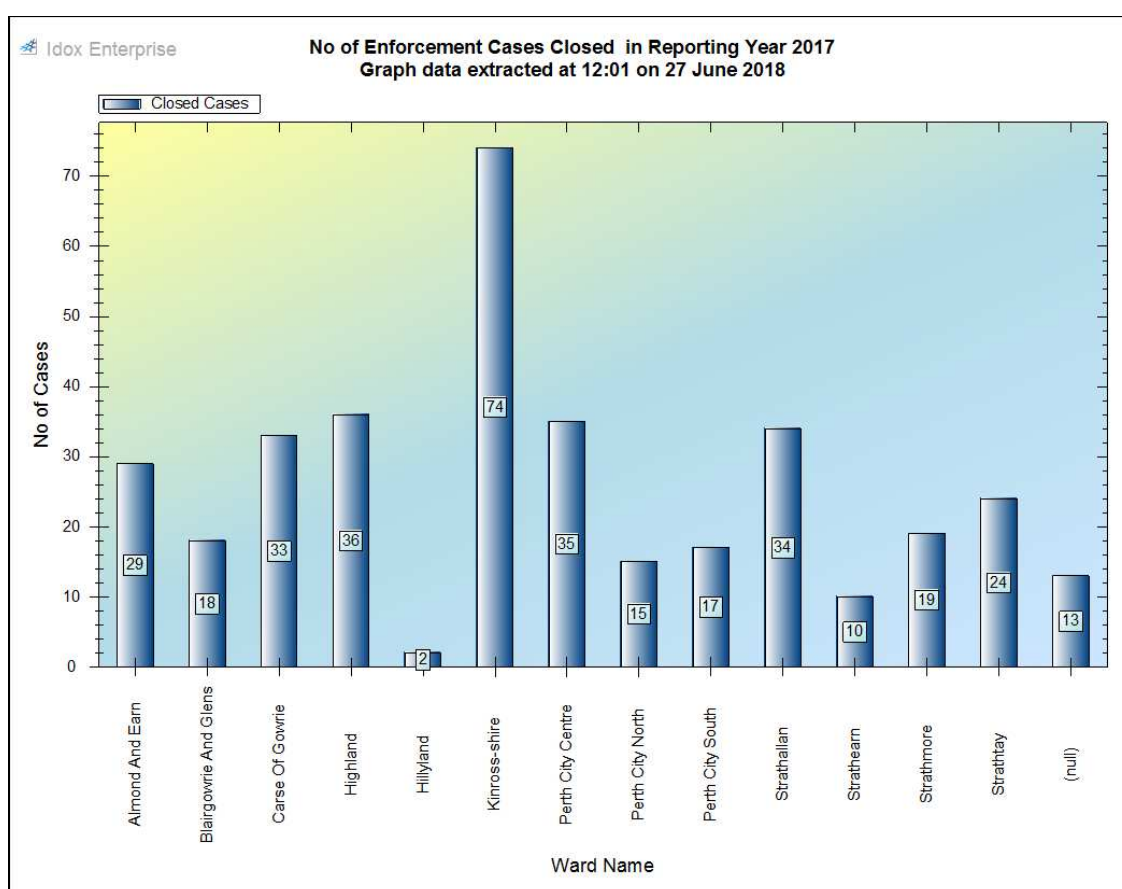


Figure 7: Demography of Cases by Council Ward 2017/18

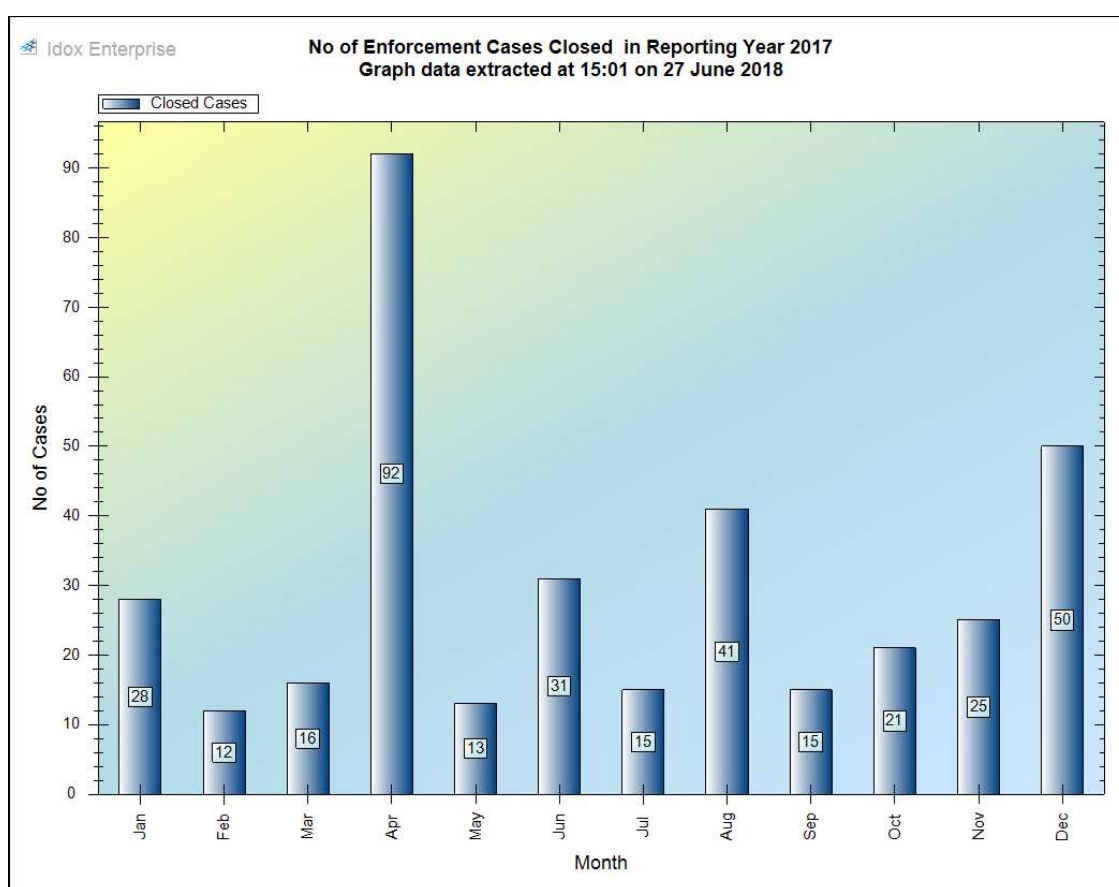
Ward	Cases*	Population	Applications
Ward 1 – Carse of Gowrie	9.2%	7.0%	7.0%
Ward 2 – Strathmore	5.3%	10.0%	7.4%
Ward 3 – Blairgowrie and the Glens	5.0%	8.0%	7.4%
Ward 4 – Highland	10.0%	6.0%	14.7%
Ward 5 – Strathtay	6.7%	6.0%	11.5%
Ward 6 – Strathearn	2.8%	7.0%	8.4%
Ward 7 – Strathallan	9.5%	7.0%	7.9%
Ward 8 – Kinross-shire	20.6%	9.0%	12.0%
Ward 9 – Almond and Earn	8.1%	8.0%	6.1%
Ward 10 – Perth City South	4.7%	9.0%	4.6%
Ward 11 – Perth City North	4.2%	11.0%	2.8%
Ward 12 – Perth City Centre	9.8%	11.0%	10.2%

- 2.20 When considering all the wards that are characterised as being rural in nature (Wards 1-9), with the exception of Ward 8 as discussed above, there is a reasonable degree of correlation between the proportion of enforcement cases compared to the population; ranging from Ward 2 – Strathmore having the lowest share of cases (lower by 4.7%) to Ward 4 – Highland being highest (higher by 4.7%). Ward 9 – Almond and Earn sits at near parity (higher by only 0.1%).
- 2.21 In terms of comparison between enforcement cases and development activity (planning applications), Ward 8 – Kinross-shire again has the highest variance (higher by 8.6%), with the lowest share in this respect being Ward 6 – Strathearn (lower by 5.6%).
- 2.22 For the urban area of Perth, there are general correlations between the three wards; Ward 10 – Perth City South; Ward 11 – Perth City North and Ward 12 – Perth City Centre. These wards, and the city centre in particular, generally have a far higher proportion of business and commercial uses subject of enforcement investigation when compared to rural wards. Perth City South and North (Wards 10 and 11) are comparable for caseload composition – with the City Centre (Ward 12) being an exception, with double the caseload measured against population.
- 2.23 This could be indicative of the very high level of activity and interest in the City Centre. In comparison to rural wards, activity is typically lower in Wards 10 and 11 while Ward 12 has a higher level, as discussed above. There is also a much smaller variance in the Perth wards, than in the rural wards, in respect of relationship between enforcement cases and development activity. This ranges from Ward 12 – Perth City Centre being lower by 0.4% and up to Ward 11 – Perth City North at 1.4% higher. Ward 10 – Perth City South is near parity, at 0.1% higher.

Seasonal Variation of Enforcement Reporting

- 2.24 Possible seasonal variation for the reporting of breaches has been assessed. It is evident that there is a spike in development activity from spring (March/April) through summer onwards, with a fall-back in winter (October/November) – for both enforcement activity and the submission of planning applications. The seasonal activity for Planning Enforcement is illustrated by Figure 8.

Figure 8: Monthly Enforcement Activity 2017/18



Future Monitoring Improvements

- 2.25 The Planning Service continues to develop other means to monitor performance and activity for planning enforcement. From the beginning of the current reporting year (1 April 2018), further enhancements have been implemented to our case management database. This will allow the dual benefit of clearer certainty of why we have taken the action we have (to close a case and/or take formal enforcement action) and being able to analyse our performance and proactivity in these areas. This analysis will further assist resource planning and continue consistent practice within the team. It is anticipated that analysis of these results will be provided within future performance reports.
- 2.26 At present, the categories of case types (as illustrated in Figure 5) does not allow distinction to be made for breaches specifically relating to trees – such as unauthorised works to, or removal, of trees subject of a Tree Preservation Order (TPO), trees within a Conservation Area or trees protected during construction. These instead are recorded in other, broader, categories of 'Unauthorised Works', 'Conservation Area' or 'Breach of Planning Condition'. For 2017/18, there were 27 cases where trees/woodland specifically referenced in the breach reported (7.5% of total cases). To enable efficient recording of enforcement activity for tree matters a new 'Tree' category was created in August 2018.

Enforcement Notice Appeals

- 2.27 Where an enforcement notice is served the developer can, in most cases, submit an appeal to the Scottish Ministers. Most enforcement appeals are delegated to a Reporter within the [Scottish Government's Planning and Environmental Appeals Division \(DPEA\)](#) to determine. Officers defend notices served in such appeals to uphold the objective of the notice which seeks to remedy a breach of planning control because it was determined that it was in the public interest to take formal enforcement action. Reporters' determined 6 enforcement appeals in this period (5 Enforcement Notices and 1 Listed Building Enforcement Notice). Of these appeals, 3 were dismissed (with the notices taking effect), 2 appeals were allowed (notices overturned) and 1 was partially allowed (only the time period for the notice taking effect was altered).

Legislative Framework

- 2.28 [The Planning \(Scotland\) Bill](#) was introduced to the Scottish Parliament on 4 December 2017. The Bill, as introduced, proposes a number of amendments to the Town and Country Planning (Scotland) Act 1997. With respect to planning enforcement, Section 22 and 23 are relevant; proposing increases to fines and liability for expenses under enforcement notices. The Bill completed Stage 1 on 29 May 2018 and is timetabled for consideration at Stage 2 in September 2018, during which time it is subject to possible modification. It is anticipated that the Bill might progress to Stage 3 during Winter 2018/19 with Royal Assent in early 2019.
- 2.29 The Bill could alter the legislative framework and therefore duties and operations of the Planning Enforcement team. This process will be monitored and practice will be amended accordingly. Changes of significance will be reported in the 2019 Annual Planning Enforcement Report and subsequent Enforcement Charters, as required.

Good Practice

- 2.30 A key objective of the Scrutiny Review, in seeking an annual performance report, was to highlight the breadth of work and instances of good practice within the Enforcement Team. This provides an opportunity to provide a qualitative analysis that is not reflected in the performance statistics.
- 2.31 Four case studies have been selected to illustrate innovation and good practice and are included in Appendix 1. These examples have also been reported nationally within the Planning Authority's PPF for 2017/18 (which was submitted to the Scottish Government on 30 July 2018). A total of 11 planning case studies were included in the PPF and the four which specifically related to planning enforcement have all been reproduced within the appendix.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 The conclusions of the Sixth Scrutiny Review of Planning Enforcement found that it was a well-functioning service. While this is a discretionary service for the Council to provide, it was recognised that much valuable work is done within the team to contribute to the Council's corporate objectives. The breadth of this work was more extensive than initially appreciated and the scope, and indeed limitations, of the legislative framework, was acknowledged in the Review.
- 3.2 The Review identified 6 recommendations to further improve the effectiveness and value of the Planning Enforcement function. The reporting of performance through this Annual Planning Enforcement Report addresses recommendation 3 and concluded that review process.
- 3.3 This report has analysed performance within Planning Enforcement and identified areas of good or leading practice within the field.
- 3.4 The statistics discussed in Section 2, as reported to the Scottish Government and the Council's Planning Performance Framework, provide a quantitative basis for assessing performance. These illustrate that the service operates well and is improving in areas and compares favourably to performance across the country. Further measures for assessing performance and enhancing processes have been developed internally and are anticipated over time to assist in achieving further improvement.
- 3.5 Examples of good practice in Appendix 1 provide a more-rounded appraisal of the function and performance of the team on a qualitative basis. Many of these cases illustrate leading practice within the field and clearly demonstrate commitment within the team for a strong, yet balanced, enforcement function that best serves the public interest.
- 3.6 It is recommended that Committee:
 - (i) endorses this Annual Planning Enforcement Report for 2017/18; and
 - (ii) requests the Executive Director (Housing and Environment) to bring forward a further report following publication of the annual performance statistics for 2018/19.

Author

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Approved

Name	Designation	Date
Barbara Renton	Executive Director (Housing & Environment)	29 October 2018

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	None
Risk	None
Consultation	
Internal	None
External	None
Communication	
Communications Plan	None

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 This report supports the delivery of the strategic objectives within the Community Plan / Single Outcome Agreement 2013-23 in terms of the following principles:

- (iii) Promoting a prosperous, inclusive and sustainable economy; and
- (v) Creating a safe and sustainable place for future generations

Corporate Plan

- 1.2 This report contributes to the achievement of the following the Corporate Plan Priorities:

- (iii) Promoting a prosperous, inclusive and sustainable economy; and
- (v) Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

- 2.1 There are no direct financial implications arising from this report.

Workforce

- 2.2 There are no implications arising from this report.

Asset Management (land, property, IT)

- 2.3 There are no implications arising from this report.

3. Assessments

Equality Impact Assessment

- 3.1 Following an assessment using the Integrated Appraisal Toolkit, it has been determined that the proposal is **not relevant** for the purposes of EqIA.

Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. No further action is required as the subject of this report does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.3 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:
- in the way best calculated to delivery of the Act's emissions reduction targets;
 - in the way best calculated to deliver any statutory adaptation programmes; and
 - in a way that it considers most sustainable.

- 3.4 There are no sustainability implications of the report under this legislation.

Legal and Governance

- 3.5 There are no implications arising from the report.

Risk

- 3.6 There are no risks associated with the report.

4. Consultation

Internal

- 4.1 None.

External

- 4.2 None.

5. Communication

- 5.1 None.

2. BACKGROUND PAPERS

- Guide to Scrutiny at Perth and Kinross Council 2014 (report 14/261).
- Sixth Scrutiny Review: Planning Enforcement (report 15/550).

3. APPENDICES

- 3.1 Appendix 1 – Examples of Good Practice: Case Studies