

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Strategic Environment Committee
Date: 19 November 2019
Reporting officer: Director (Planning and Development)
Subject: Planning performance

Purpose and summary of report:

This report is produced at the request of Members and is the first of a regular series intended to be presented every six months to inform Members on current performance in respect of the planning service

Recommendations:

This report is submitted for information to assist the committee in monitoring planning activity and Members are requested to:

- a) Discuss, note recent improvement and comment upon the information provided; and
- b) Identify other areas of performance they wish to see included in future reports.

1. Background

1.1 Performance relating to the processing of planning applications is collected at Gravesham as previously required under the old National Indicator 157, and figures in this format are still reported to government on a quarterly basis. The NI157-based targets are:

- Major developments: to determine 60% of applications within 13 weeks.
- Minor Developments: to determine 70% of applications within 8 weeks.
- Other Developments: to determine 70% of applications within 8 weeks.

However, it should be noted that not all applications determined by this authority are monitored through the Council's PS2 returns to government (upon which national comparisons are based), exceptions including approval / removal of conditions, consultations by neighbouring authorities, non-material and minor-material amendment applications, request for a scoping opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, confirmation that conditions have been complied with, prior approval applications, etc.

Furthermore, there are occasions when, for perfectly acceptable reasons, e.g. an applicant being required to submit further necessary information or scheme

- amendments to make the proposal acceptable, when extensions of time (EOT) are negotiated with an applicant / agent. In those instances, provided the decision is made within the extended period agreed, the decision is considered to have been made within the target period.
- 1.2 Whilst these figures remain helpful for the purposes of management performance monitoring, perhaps of greater importance are those figures collected that identify 'failing' authorities where government will consider taking action.
 - 1.3 "Improving planning performance Criteria for designation" which was last revised in 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760040/Improving_planning_performance.pdf sets out the criteria which the government intends to use to designate local planning authorities if their performance in handling planning applications falls below a satisfactory level, under the powers contained in section 62B of the Town and Country Planning Act 1990.
 - 1.4 Section 1 of the Growth and Infrastructure Act 2013 inserted sections 62A **and** 62B into the Town and Country Planning Act 1990 ("the 1990 Act"). Section 62A allows certain applications to be made directly to the Secretary of State, where the local planning authority for the area has been designated for this purpose. Section 62B requires that the criteria for any such designation, or for revoking a designation, must be set out in a document published by the Secretary of State and laid before Parliament.
 - 1.5 These statistics are monitored on a cumulative basis over a two year period, although officers monitor the trajectory on a quarterly basis to ensure unanticipated problems do not arise. The government refers to this as the 'speed of decision' test.
 - 1.6 The most recent monitoring covers to period from 1 October 2017 to 31 September 2019, so we are able to report on the outcome of the full monitoring period.
 - 1.7 When a planning application is refused, the applicant has the right to appeal. The timescale for lodging an appeal varies depending on whether the application relates to a householder matter, non-householder matter or whether the proposal has also been the subject of an Enforcement Notice.
 - 1.8 Appeals can also be lodged against conditions imposed on a planning approval and against the non-determination of an application that has passed the statutory time period for determination.
 - 1.9 Where the Council has taken enforcement action through the serving of an Enforcement Notice then an appeal can be lodged in relation to that. An appeal cannot be lodged though in relation to a breach of condition notice on the basis primarily that if the individual did not like the condition then they could have appealed against that at the time it was originally imposed.
 - 1.10 The appeals are determined by Inspectors appointed by the Secretary of State and administered by the Planning Inspectorate, which informs the Council of the Inspector's decision.
 - 1.11 An appeal may be determined after a Public Inquiry, a Hearing or written representations. It is possible for cost applications to be made either by the

appellants against the Council or vice versa if it is alleged that either has acted in an unreasonable way. Powers have now been introduced for Inspectors to award costs if they feel either party has acted unreasonably, irrespective of whether either party has made an application for costs.

- 1.12 It is possible for decisions made by Inspectors on appeal to be challenged through the Courts, but only if it is considered that an Inspector has erred in law, for instance by not considering a relevant issue or not following the correct procedure. A decision cannot be challenged just because an Authority or appellant does not agree with it. A successful challenge would result in an Inspector having to make the decision again in the correct fashion, e.g. by taking into account the relevant factor or following the correct procedure. This may lead ultimately to the same decision being made.
- 1.13 It is possible for Planning Inspectors to make a 'split' decision, where they allow one part of an appeal but not another. This is not possible for the Council when it makes its original decision on the planning application other than for advertisement applications.
- 1.14 The government also monitors a number of appeal decisions on a similar basis to that for 'speed of decision' mentioned at 1.3, under the banner of the 'quality of decision' test. Whilst officers monitor all appeal decisions and seek to learn from those where the Council's decision has been overturned, it is the quality of decision monitoring that is considered particularly relevant.
- 1.15 The period for which this cumulative performance is gathered is different to that for the speed of decision, and we are currently monitoring the period from 1 April 2018 to 31 March 2020. We are therefore three-quarters of the way through this monitoring period and can therefore only report for that.
- 1.16 The authority also provides a pre-application advice service and determines applications relating to works to trees (Tree Preservation Order and Conservation Area-related). Statistics for the past six months are provided in respect of these functions only.
- 1.17 The Council has a duty to investigate complaints about development, including building and engineering works and changes of use that may have been carried out without permission or consent and breaches of conditions imposed on planning applications. This work is undertaken by the planning enforcement team.
- 1.18 In the vast majority of cases planning permission is required before a new use begins or activities are carried out. However, some minor works or changes of use do not need permission but this should be clarified beforehand to avoid any confusion. Where this control is breached, the enforcement team will investigate the matter. It is important, however, to realise that enforcement action is taken at the discretion of the Council.
- 1.19 Planning enforcement is a very complex area. The legal processes involved are often lengthy and complicated and an 'instant response' or resolution cannot be guaranteed. Furthermore, in dealing with breaches there is a need to strike a balance between protecting the environment, protecting the amenities of neighbours and conserving historic building and areas, whilst at the same time enabling the freedom of the owners to use or alter their property as they wish, even though it may initially have been unauthorised.

1.20 A Development Plan (or Local Plan) sets out the planning policies that guide development in the borough. By law, we must determine planning applications in accordance with our Local Plan, while also taking into account any other material considerations.

1.21 The Local Plan for Gravesham currently consists of:

- Gravesham Local Plan Core Strategy and Policies Map (adopted December 2014);
- Gravesham Local Plan First Review – Saved Policies; and
- Kent Minerals and Waste Local Plan 2013-30 (adopted July 2016).

1.22 Officers are currently progressing a number of work streams, including preparation of a Local Plan Core Strategy Partial Review and a Site Allocations and Development Management Policies document. The Development Management Policies, when adopted, will replace the remaining saved policies in the Gravesham Local Plan First Review.

2. Performance

2.1 Development Management

During the period 1 April 2019 to 30 September 2019 the authority received and validated 693 planning applications; this is compared to 624, 700 and 580 for the periods 1 October 2017 – 31 March 2018; 1 April 2018 – 30 September 2018; and 1 October 2018 – 31 March 2019 respectively. This shows a small decrease in applications received of 7 applications / -1% between the latest six-month period and the equivalent period in 2018 whereas national data for the period 1 April 2019 – 30 June 2019 shows a decline of 3% for the same quarter last year (six-monthly comparable data not available).

2.2 The graph below shows the number of all applications received and validated within each of the six-month periods by type – non-major, used for government returns, being a combination of ‘minor’ and ‘other’ applications.

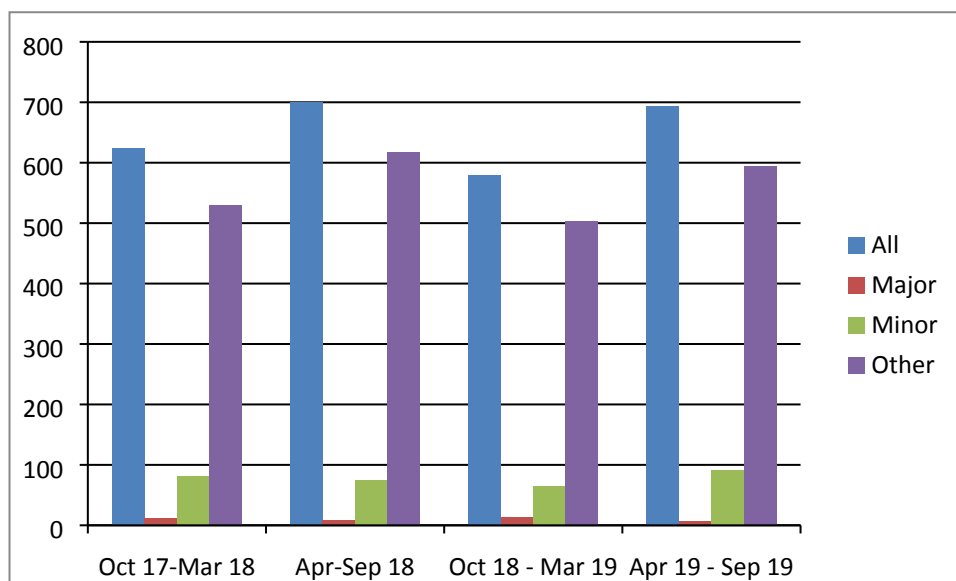


Figure 1: Applications received and validated, by type, during the period

2.3 Performance relating to the determination of applications required for PS2 returns (see 1.1, above) is monitored against the target determination times by type or, if appropriate, against an agreed Extension of Time (EOT) period, performance against these measures being shown in the graph below.

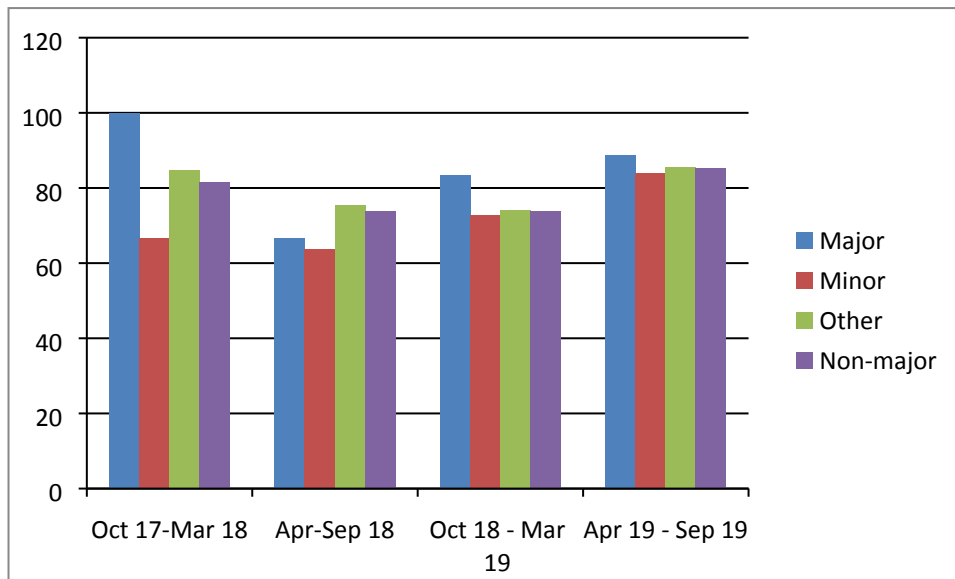


Figure 2: Applications determined in time or within agreed Extension of Time period (%)

2.4 As mentioned at 1.3, the government monitors 'speed' of decision relating to those applications used in the governments PS2 Returns, i.e. excluding those applications relating to approval / removal of conditions, consultations by neighbouring authorities, non-material and minor-material amendment applications, request for a scoping opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, confirmation that conditions have been complied with, prior approval applications, etc.

The current monitoring period for 1 October 2017 to 31 September 2019 deals with cumulative outturns and the information, split between major and non-major applications, can be seen below.

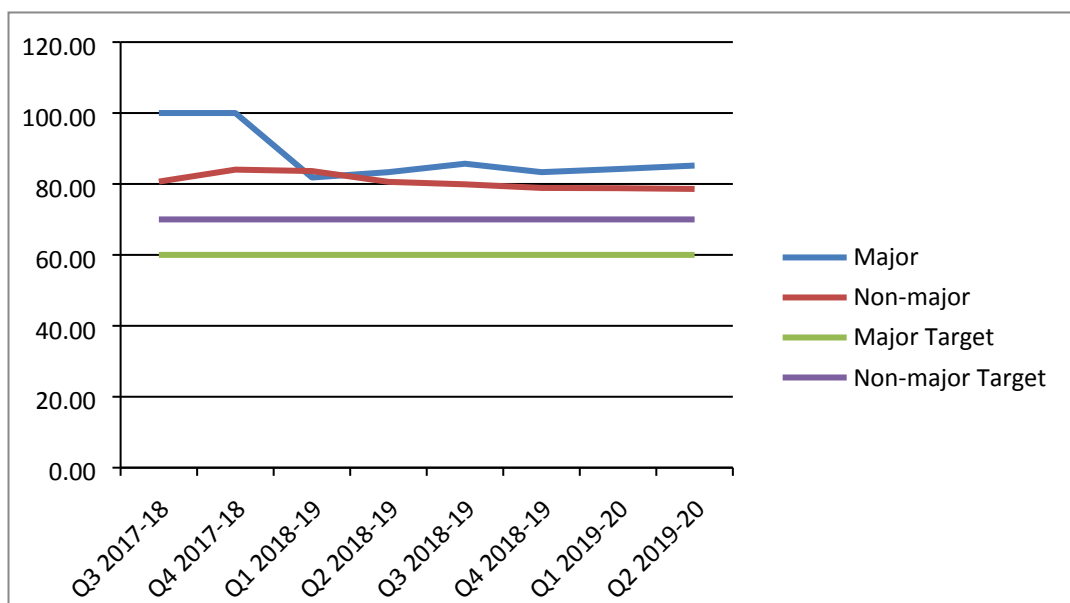


Figure 3: 'Speed of delivery' 2-year cumulative outturn (Oct 2017 to Sept 2019) (%)

As can be seen, the Council is performing above the thresholds required to trigger government intervention, the dip in performance in Q1 2018/19 in respect of major applications relating to failure to determine two major applications out of five determined within that period within the target period, otherwise performance in applications of this type has been at 100% or 75% demonstrating the impact on small numbers of applications.

- 2.5 Planning law requires that applications for planning permission be determined in accordance with the development plan and also reflect relevant international obligations and statutory requirements. There is, within the National Planning Policy Framework (NPPF 2019), a 'presumption in favour of sustainable development' with Para 11 stating:

For **decision-taking** this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

However, just approximately 78% of the borough's area is subject to Green Belt designation, with large areas also falling within the Kent Downs Area of Outstanding Natural Beauty (AONB) and other areas of protection. "Green Belt policy is particularly relevant in that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances" (NPPF 2019, Para 143). The NPPF goes on, in Para 144, to state that:

"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations". Thus, whilst officers endeavour to work with applicants to ensure that applications are policy compliant and therefore can be transparently approved, and performance in this regard is monitored, this presumption against inappropriate development affecting over three-quarters of our area, clearly has an impact, the proportion of all applications received that are within the area affected by Green Belt policy being, on average, 19.5% during the last two years.

It should also be noted that the amount of work required when considering even relatively simple householder development within these protected areas is greater than for other areas, thereby also impacting on the speed at which decisions can be made.

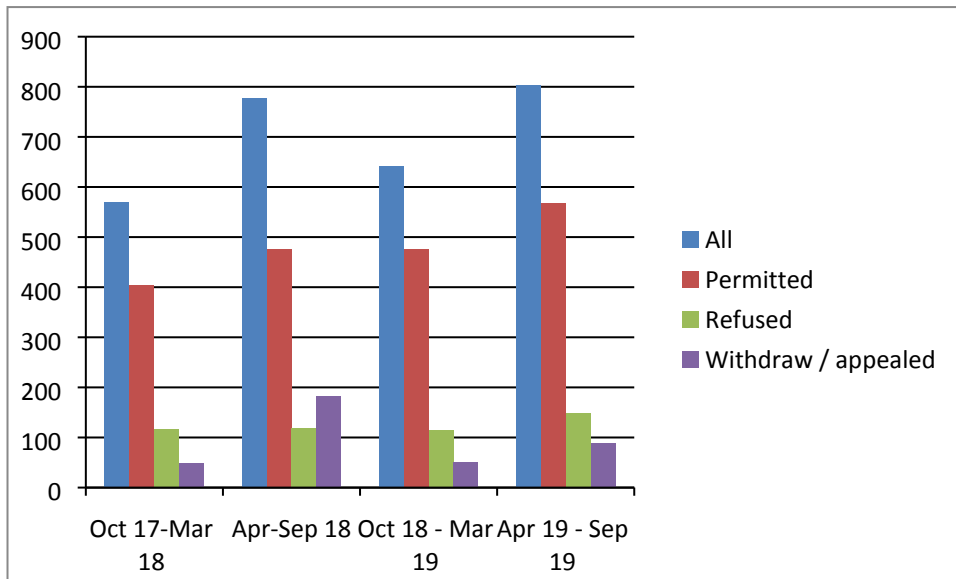


Figure 4: Applications determined, withdrawn or appealed against non-determination

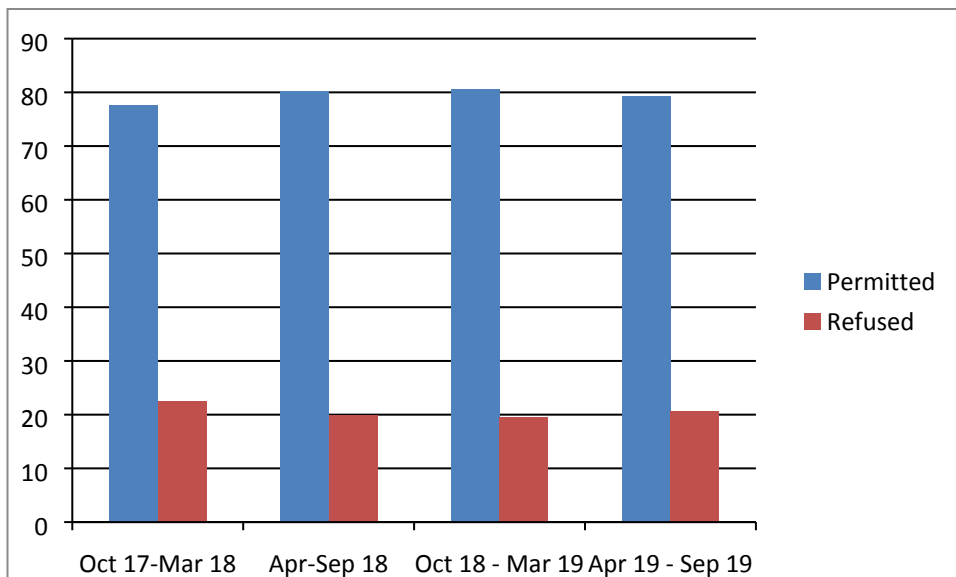


Figure 5: Applications determined - % permitted and refused

2.6 In addition to processing and determining formal applications submitted to the Council, we also offer a pre-application advice service designed to assist potential applicants to prepare all the necessary documentation and address all material considerations in advance of formal submission. Whilst this is not a statutory service, it is considered to be best practice and can result in the submission of applications that are complete upon submission and in a form ready to move through to determination. This is a paid for service, with a fee structure designed to cover its costs.

The table below shows details of the number of submissions received during each period and the number responded to.

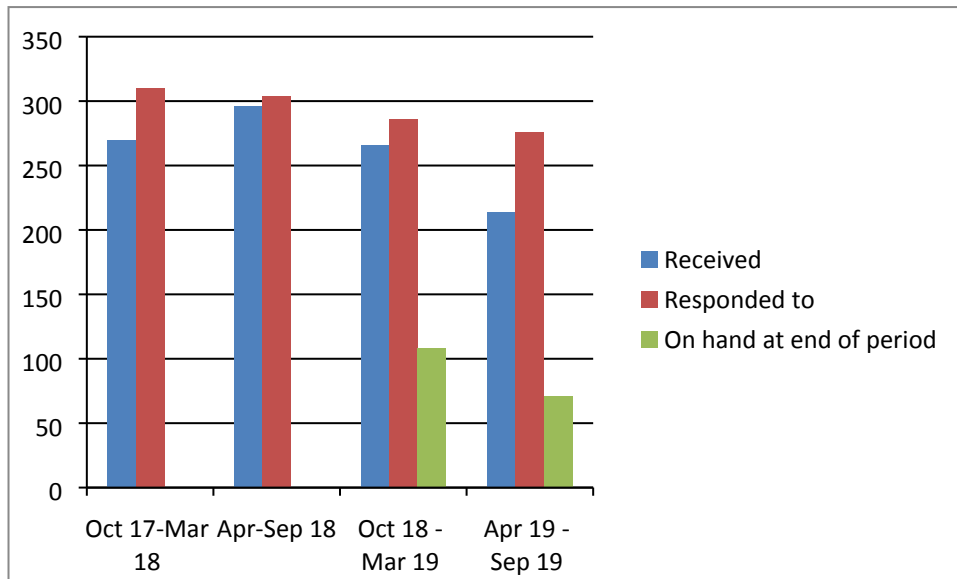


Figure 6: Pre-application submissions

- 2.7 The 'quality of decision' is reviewed by Government and the threshold for designation on applications for both major and non-major development is 10% of an authority's total number of decisions being allowed on appeal. For the 24 months to the end of March 2019, government statistics show the number of decisions overturned at appeal nationally for major applications was 2.2%. For this Council it was 0%.
- 2.8 As regards decisions relating to non-major applications within that same monitoring period, government statistics show the number of decisions overturned at appeal for non-major applications is 1.2%. For this Council it was 1.1%.

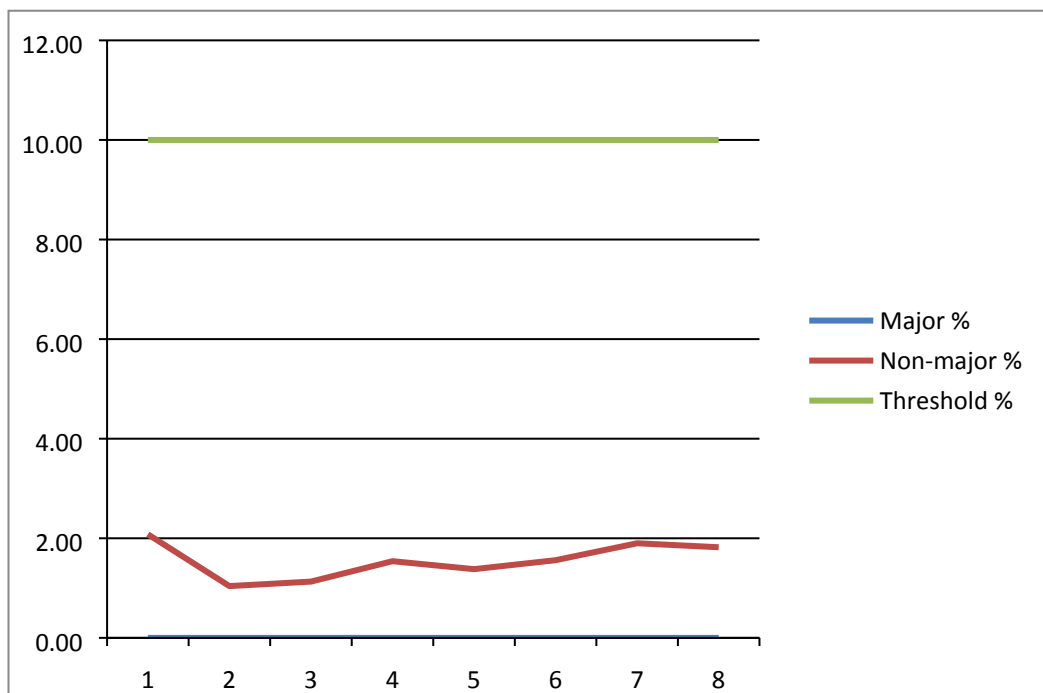


Figure 7: 'Quality of decision' 2-year cumulative outturn (April 2017 to March 2019) (%)

With six months of the monitoring period still remaining, our current 'quality of decision' cumulative outturn is currently 4.76 (major) and 1.55% (non-major). This increased figure is the result of the low number of appeals relating to major

decisions (21 to date) and a single appeal being allowed in the April to June period of 2019. The current position is shown in the graph below.

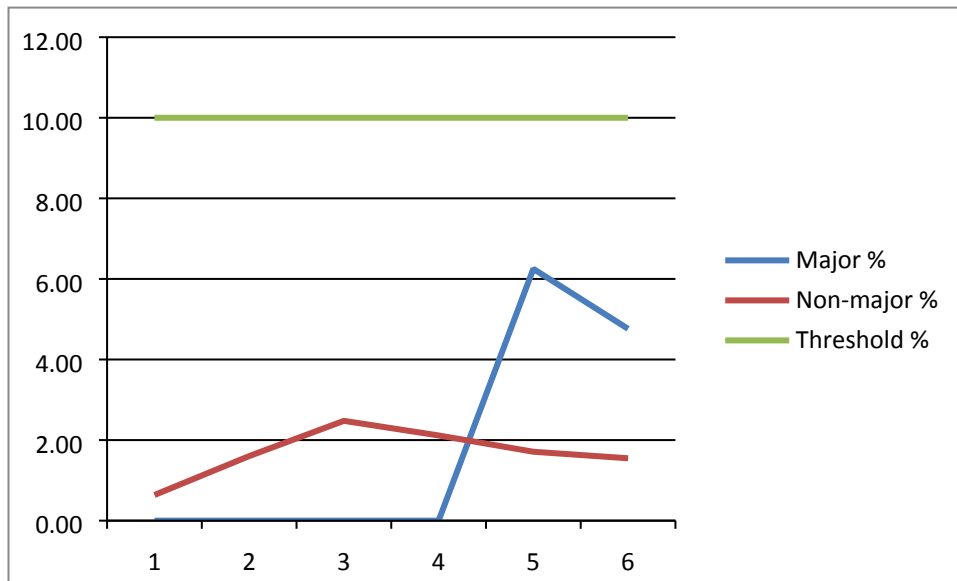


Figure 8: 'Quality of decision' 2-year cumulative outturn (April 2018 to March 2020) (%)

2.9 In addition to monitoring in accordance with the formula required for the government's thresholds, appeal decisions are monitored and lessons learned, both from those successfully defended and those allowed. This aspect of the department's work will be the subject of a Member training session on 14 January 2020, but the decisions issued over the past two years can be summarised below.

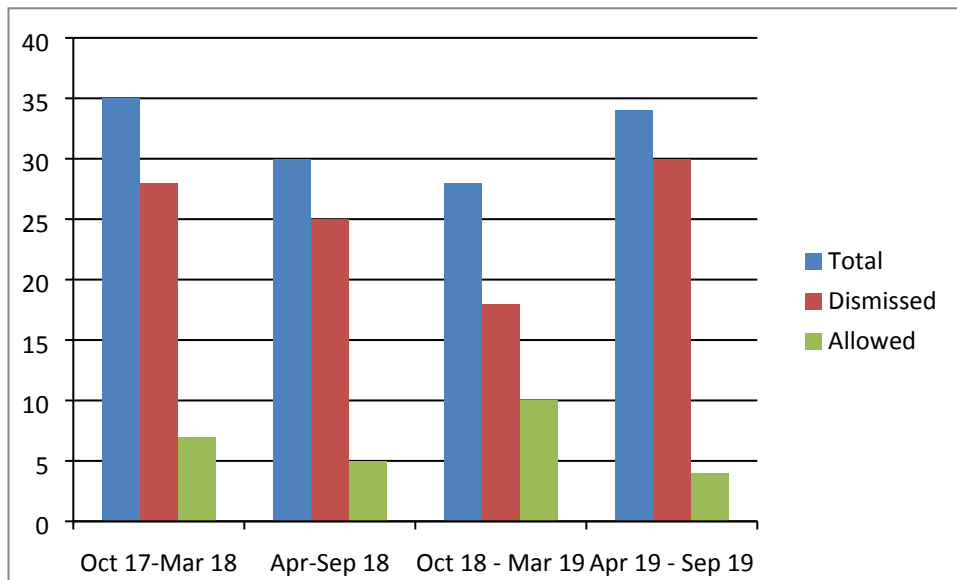


Figure 9: Appeal decisions received in the period

2.10 Officers are also responsible for determining applications to undertake works to trees that are either the subject of Tree Preservation Orders (TPOs) or are located within a Conservation Area.

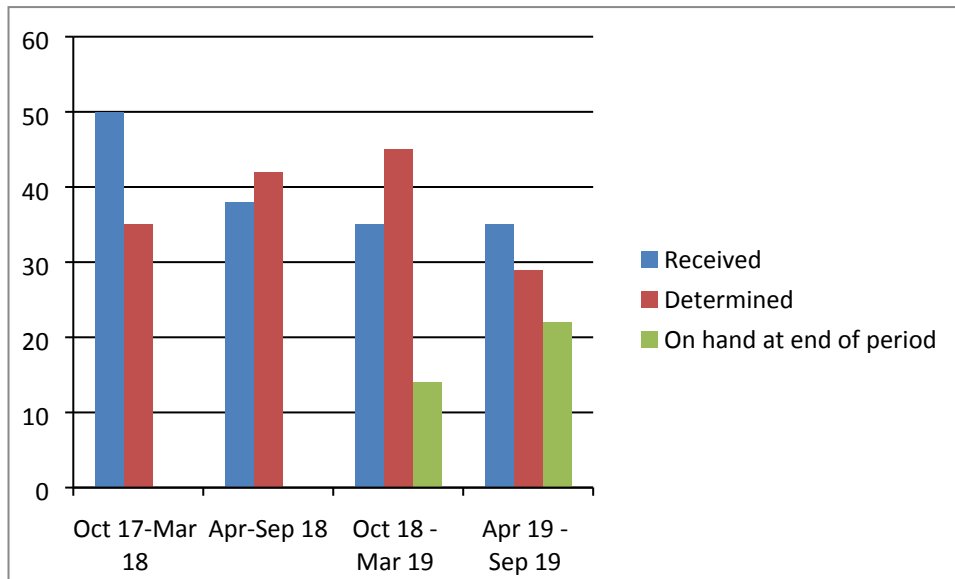


Figure 10: Applications for works to trees subject of a TPO or within a Conservation Area

2.11 Efforts have been made to manage pressure on officer resources in order to meet national performance targets and to deliver additional housing units as a priority. This pressure continues although capacity can be impacted upon by issues such as annual leave, sickness, maternity leave and / or vacancies, and thus the workload will need to be carefully managed into the future if performance is to continue to be maintained.

2.12 Planning Enforcement

In the period 1 April 2019 to 31 September 2019 the Council registered 158 new cases about alleged breaches of planning control. These are referred to as 'complaints'. This compares with 192 complaints registered in the preceding six month period.

2.13 Complaints are categorised by priority, as follows:

Priority 1 – Unauthorised development that threatens immediate and irreparable harm (Immediate Investigation)

Priority 2 – Unauthorised development which threatens limited harm (Investigation in 5 working days)

Priority 3 - Breaches of planning control that threaten less or no harm (Investigation in 10 working days)

Although this is the Council's published policy, all Priority 2 and 3 reports are investigated within 5 working days.

2.14 The enforcement module of the Council's Uniform computer package has only been brought online relatively recently, which limits our ability to provide comparable data over time. However, Officers are identifying information that is likely to be of interest to Members, and looking to adjust the recording system to enable the necessary reports to be generated. In the meantime, the following provides a summary of enforcement activity within the six-month period to 31 September 2019:

Measure		No. and / or %
Number of contacts received		158
Source of report	Member	2 / 1.26%
	Officer	47 / 29.75%
	Public / other	109 / 68.99%
% of registered cases investigated within target times by priority	Priority 1	100.00%
	Priority 2	100.00%
	Priority 3	100.00%
Outcome of investigation into reported cases	Cases closed in period, i.e. no breach established, permitted development, permission granted, etc.	101 / 63.92%
	Cases pending consideration	37 / 23.42%
	Cases with planning applications pending determination	20 / 12.66%
Number of notices served	Enforcement	1
	Breach of condition	0
	Other	0
% of notices appealed		100.00%
% of notices	Upheld	0
	Dismissed / Withdrawn	2

2.15 In cases where an enforcement notice has not been complied with, the Council may exercise its powers of prosecution, but none have occurred in this period.

2.16 Planning Policy

As Members will be aware, a number of reports have been presented to Cabinet in recent times, seeking to drive forward the Local Plan, the Core Strategy having been adopted in December 2014. Those reports include:

The Housing Delivery Action Plan (https://www.gravesham.gov.uk/_data/assets/pdf_file/0007/827809/Housing-Delivery-Action-Plan.pdf), demonstrates how we are positively responding to the challenge of increasing housing delivery. The Action Plan identifies practical measures for improving local housing delivery and is informed by local evidence and research of key issues. This is a living document that will be updated, at least, annually;

The Statement of Community Involvement (https://www.gravesham.gov.uk/_data/assets/pdf_file/0011/69815/Statement-of-Community-Involvement.pdf), which sets out how and when local residents, businesses and organisations can get involved in preparing the Local Plan and how we will consult on major planning applications was adopted in October 2019;

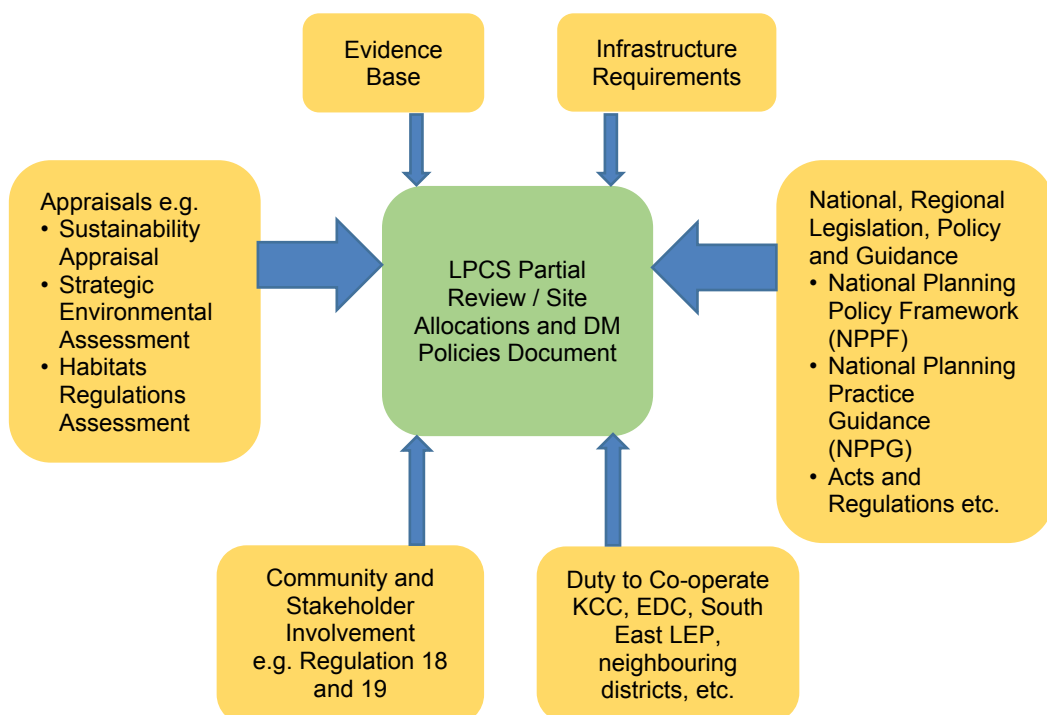
The Local Development Scheme (https://www.gravesham.gov.uk/_data/assets/pdf_file/0005/371903/Local-Development-Scheme.pdf), which sets out the current timetable, including consultation opportunities, for delivering the Local Plan Core Strategy Partial Review and the Site Allocations and Development Management Policies Document and the Policies Map, was approved and published in October 2019;

The Local Plan Review (https://www.gravesham.gov.uk/_data/assets/pdf_file/0003/829506/Local-Plan-5-Year-Review.pdf), required as the National Planning Policy Framework (2019) sets out that policies within adopted local plans should be reviewed to assess whether they need updating once every five years, and updated as necessary. Reviews should be completed no later than 5 years from the adoption date of a plan. The Borough’s Local Plan Core Strategy was adopted by the Council on 30 September 2014 and the Review adopted in September 2019; and

The Draft Development Management Policies (<http://democracy.gravesham.gov.uk/documents/g3111/Public%20reports%20pack%20Monday%2007-Oct-2019%2019.30%20Cabinet.pdf?T=10>) sets out detailed policies to guide decisions on planning applications and was approved for consultation by Cabinet in October 2019.

2.17 The draft Local Plan Core Strategy Partial Review, including site allocations, which reviews the current strategic policy on the scale and distribution of development in Gravesham, will be reported to Cabinet in January, seeking authority to progress, with the draft Development Management Policies, to consultation.

2.18 Officers are tasked with driving this work forward, the process being as follows with the agreed timetable set out below it:



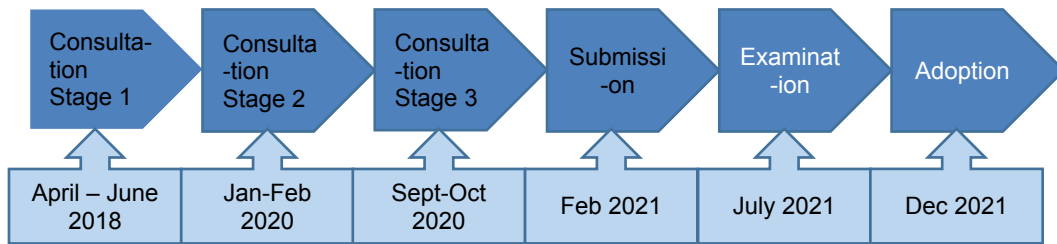


Figure 10: Local Plan process and timetable

It should be noted that, in general, the timetable up to submission is under the control of the local authority but, once with the Inspectorate the timetable will be progressed at their discretion.

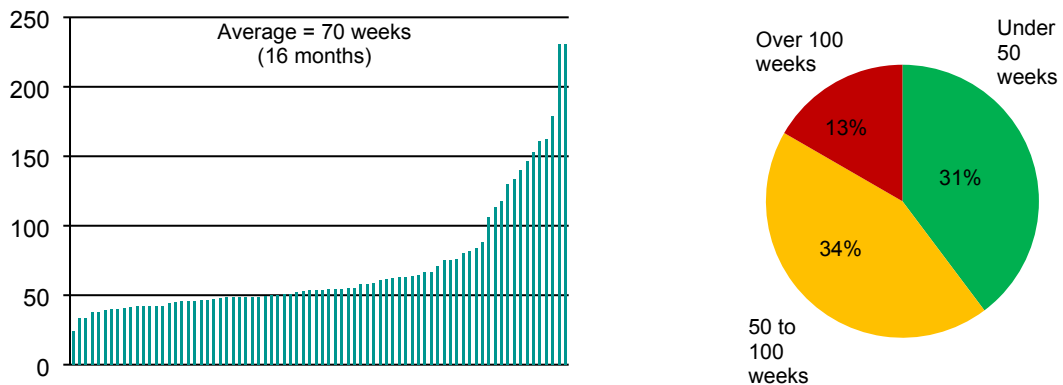


Figure 11: Planning Inspectorate Local Plan Examination Time Frame

3. What improvements have been secured to date and what is planned

3.1 With a particular focus on the Development Management service, improvements, which have led to an improved service offered to applicants, agents and the public generally, include:

- Fully resourced and skilled workforce
 - creation of new posts to focus on Planning Conditions monitoring National Significant Infrastructure Planning Projects and Planning Appeals and Obligations following issues identified by internal audits,
 - continue to use experienced external resources
 - growing own staff – mentoring and support. Looking at staff skills and opportunities to progress into planning. Temporary agency staff tried but rejected as not adding resource needed. Had experienced problems with retaining and recruiting experienced planning staff in Planning Policy and Development Management. Have undertaken recruitment that resulted in none being appointed – significant overhead without a positive outcome
 - job revaluation of posts to reflect skill requirements and reviewed career grade planner JD and person specification to more easily enable graduate entry and progression
 - continued support from senior managers to recruit staff to maintain establishment and agree short-term additional growth for fixed-term contracts. Staff retention has been a problem with accessibility to London and local pay offer

- Investment in IT
 - much of the planning application process is paperless. Multiple benefits for Council and the environment
 - flexible working enabled – home has same functionality as workplace for most staff
 - devices can be taken on site to enable pictures to be taken and plans to be checked without need for paper
 - Introduced Planning Performance Agreements to direct and tailor resources for determining potentially more complex applications, covering all aspects of the planning process from the pre-application stage to the discharging of conditions.
 - Re-refresh of the pre-application advice service
 - Encourage the use of Design Review Panel, which calls on industry experts to provide high quality design advice to developers
 - Reduce need for delegated reports – follow focused report style, which had been highlighted as best practice, so that reasons for permission on included on householder applications that are permitted under delegated powers
 - Refined reports where they are required to ensure they are as short and simple as possible whilst remaining fit for purpose.
- 3.2 Whilst officers are pleased with the improvements achieved so far, there are further aspirations that we are working towards, which can be summarised as follows:

Continue improvements to residential planning application processes -

- Improving the quality of applications received
 - developing a validation list (draft will shortly be out to consultation)
 - considering an accredited agent scheme
 - one aspect that does impact upon the performance of the service and the speed of development is the very high number of applications received that cannot be processed due to insufficient information being supplied. For example, the agent who submitted the most applications at 88 had 2/3rds that were invalid on submission.
 - it is hoped that an accredited agent scheme will facilitate a 'right first time' approach.
 - be consistent in approach to negotiation
- Review use of planning conditions to ensure:
 - number of conditions used is minimised,
 - use of pre-commencement conditions reduced,
 - delays in processing discharge applications minimised
 - producing standard list of planning conditions which are transparent to applicant, agent, Members and public

- concern expressed in the past that too many conditions are imposed on permissions and they take too long to discharge. Clearly, this has the potential to delay the delivery of sites particularly if conditions require information to be submitted prior to commencement of the development.
 - however needs to be highlighted that very often conditions are imposed due to reluctance from developers to submit information prior to a planning application being determined. This is because the submission of information will be a cost to the developer and there is still a risk that permission will not be granted.
- Working with legal and developers to ensure that Section 106 agreements are signed off promptly (now have time period for reference back to Committee).
 - Detailed monitoring of the planning application backlog – weekly by officer. With applications that delivery net additions being prioritised were possible
 - Website
 - Investigating whether text message updates used for licensing can be extended to planning applications – multiple benefits to customer and the Council. Problems with current configuration of planning system

4. Recommendations

- 4.1 This report is primarily submitted to assist the committee in monitoring Planning activity. However, Members are requested to:
- a) Discuss and comment upon the information provided; and
 - b) Identify other areas of performance they wish to see included in future reports.

5. BACKGROUND PAPERS

- 5.1 There are no background papers pertaining to this report.

IMPLICATIONS	APPENDIX 1
Legal	The Council's development management and planning policy functions are statutory services, with all work in these fields being undertaken in line with legislative requirements.
Finance and Value for Money	The work relating to development management and enforcement is fully funded and the Council has established a Local Plan reserve to fund its work in that regard.
Risk Assessment	<p>The processing of planning applications is closely monitored to ensure the Council does not fail to deliver against the government's speed and quality of decisions monitoring framework.</p> <p>Progress with the Local Plan is being closely monitored to ensure that any slippage can be addressed in order to deliver within the timetable set out within the recently published Local Development Scheme.</p>
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data?</p> <p>No</p> <p>A definition of each type of data can be found on the Information Commissioner's Office website via the above links.</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice?</p> <p>N/A</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk.</p> <p>N/A</p>
Equality Impact Assessment	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer.</p> <p>No</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer.</p> <p>No</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
Corporate Plan	<p>#1 People: a proud community; where residents can call a safe, clean and attractive borough their home.</p> <p>#2 Place: a dynamic borough; defined by a vibrant and productive local economy taking advantage of growth in the area, supported by its strong and active community.</p> <p>#3 Progress: an entrepreneurial authority; commercial in outlook and committed to continuous service improvement, underpinned by a skilled workforce and strong governance environment.</p>

Crime and Disorder	There are no crime and disorder issues pertaining to this report.
Digital and website implications	The Council's various digital platforms will be used to promote consultation and make material available to the public.
Safeguarding children and vulnerable adults	There are no safeguarding issues pertaining to this report.