

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Strategic Environment Committee
Date: 22 June 2020
Reporting officer: Director (Planning and Development)
Subject: Planning Performance

Purpose and summary of report:

This report is the second 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 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 As advised in the previous report, 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 the period from 1 October 2017 to 31 September 2019, so we are able to report on the outcome of the full monitoring period, as well as progress for the first three-quarters of the current monitoring period, 1 October 2018 to 31 September 2020.
 - 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 the most recent monitoring covers the period from 1 April 2018 to 31 March 2020, so we are able to report on the outcome of the full monitoring period.
- 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 also.
- 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 require 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 October 2019 to 31 March 2020 the authority received and validated 638 planning applications. By way of comparison, the table below provides figures for the three preceding six-month periods. This shows an increase in applications received of 58 applications / 10% between the latest six-month period and the equivalent period in 2018/19. Unfortunately there is no directly comparable national data available, the most recent relating to the period 1 October 2019 – 31 December 2019, which shows a decline of 7% for the same quarter in the previous year.

	1 April 2018 – 30 September 2018	1 October 2018 – 31 March 2019	1 April 2019 – 30 September 2019	1 October 2019 to 31 March 2020
Applications received and validated	700	580	693	638

- 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.

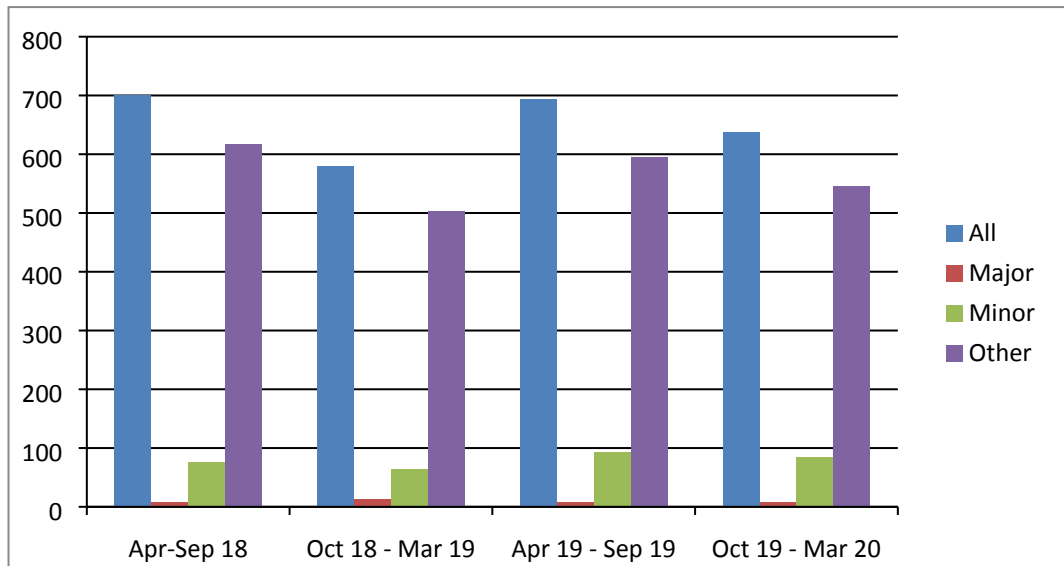


Figure 1: Applications received and validated, by type, during the period

- 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.

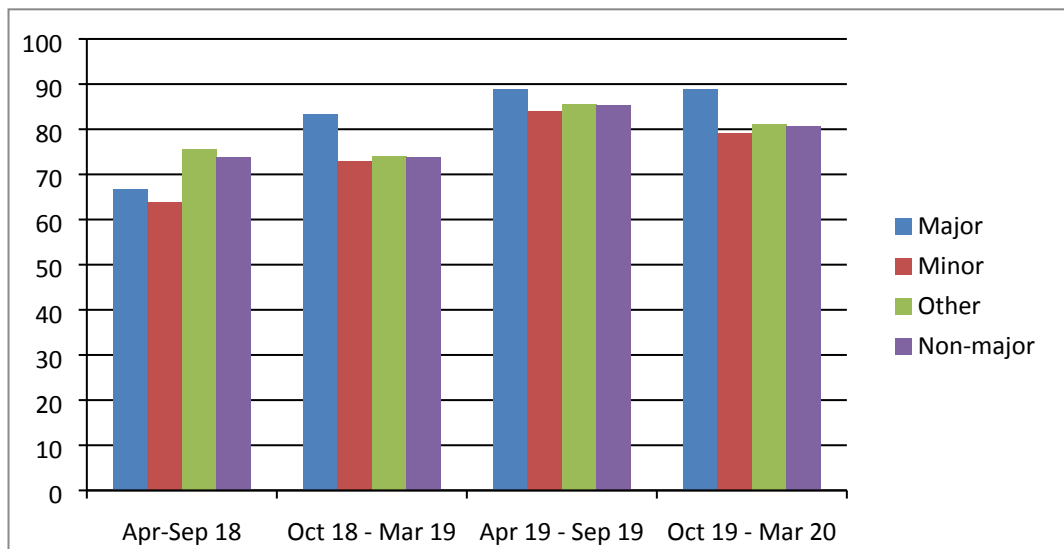


Figure 2: Applications determined in time or within agreed Extension of Time period (%)

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

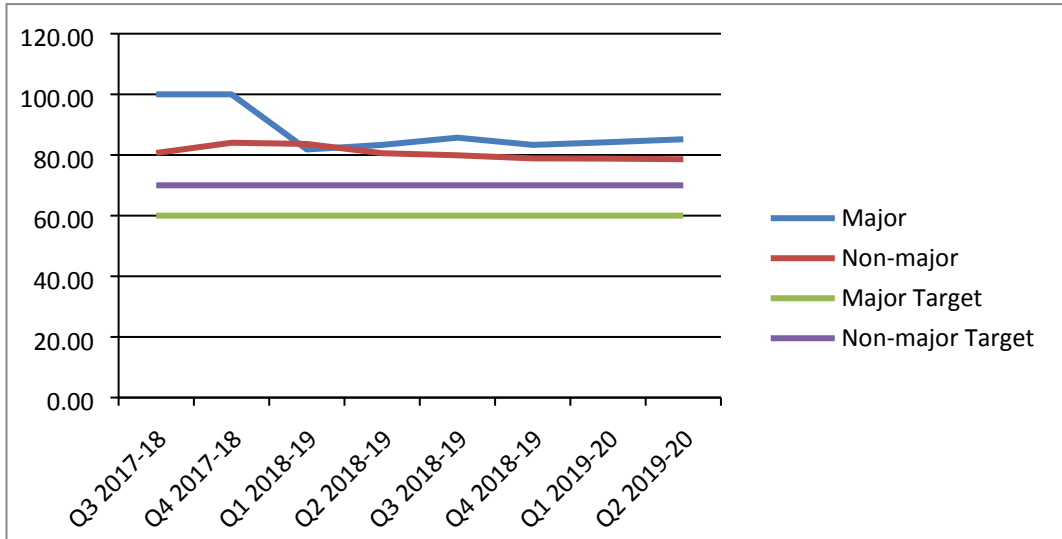


Figure 3: 'Speed of delivery' 2-year cumulative outturn (Oct 2017 to Sept 2019) (%)

As can be seen, the Council performed 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.

We are now monitoring, and are three-quarters through, the current monitoring period for 1 October 2018 to 31 September 2020, and the cumulative outturns can be seen below, the dip relating to major applications mentioned above continuing into the current period, due to the cumulative nature of the measure.

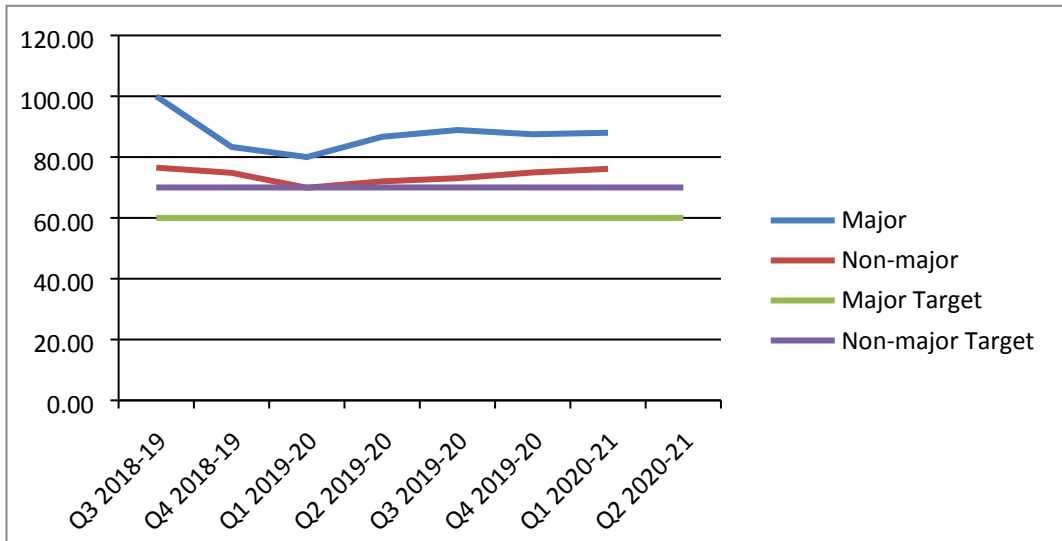


Figure 4: 'Speed of delivery' 2-year cumulative outturn (Oct 2018 to Sept 2020) (%)

2.5 Planning law requires that applications for planning permission are 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, 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, 21.4% during the last two years.

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

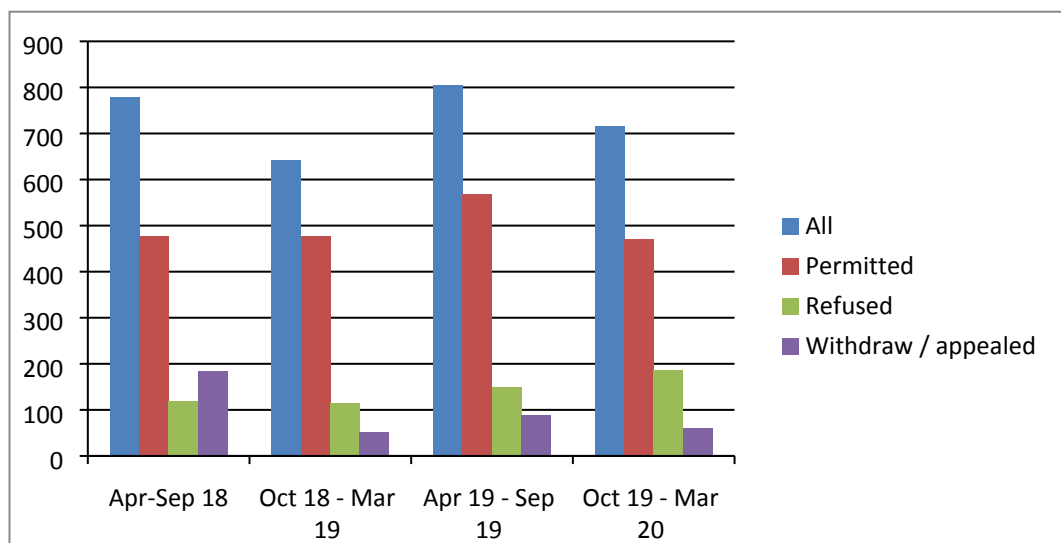


Figure 5: Applications determined, withdrawn or appealed against non-determination

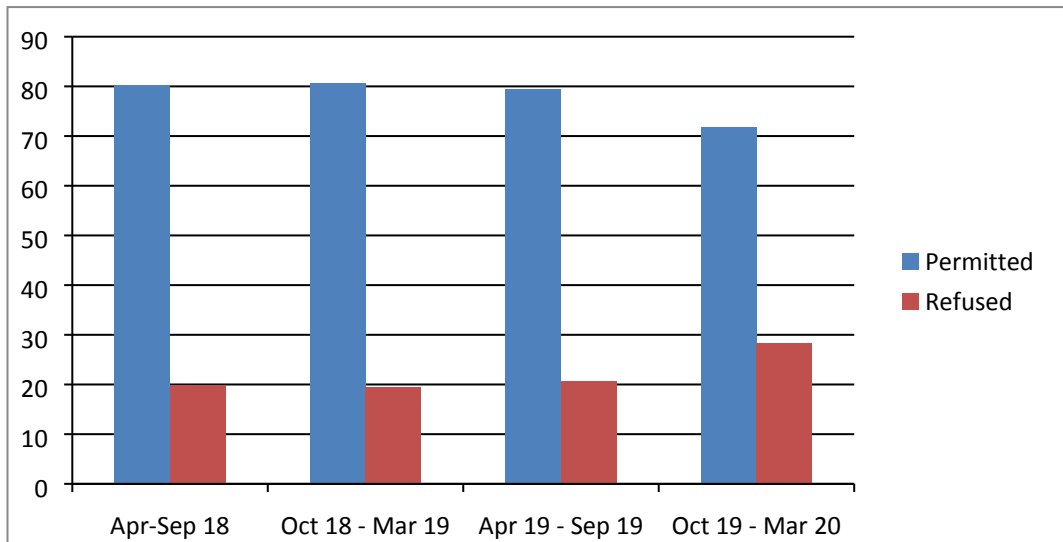


Figure 6: Applications determined - % permitted and refused

- 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, the number responded to and those on hand at the end of that period.

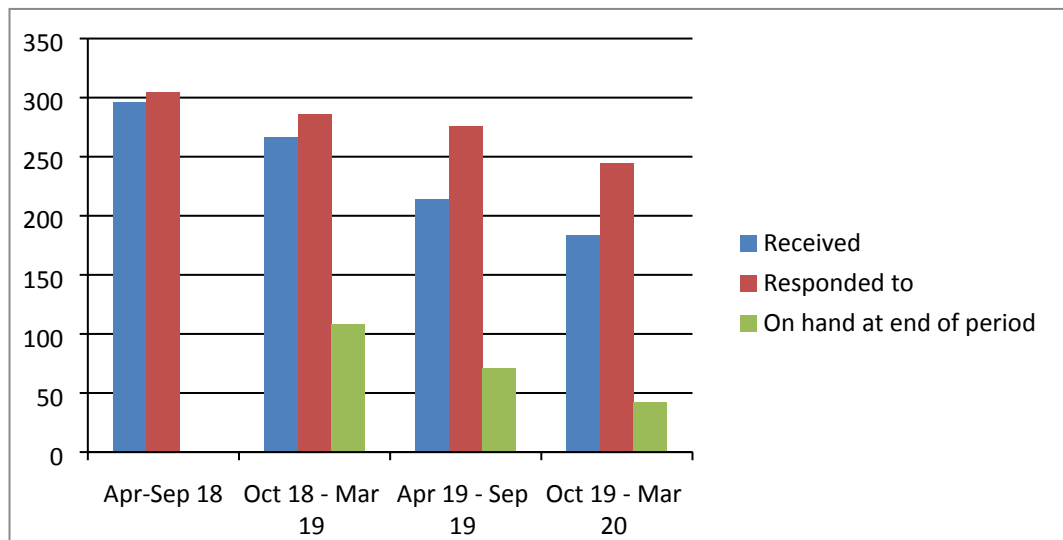


Figure 7: Pre-application submissions

- 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 latest two years for which national data is available (1 October 2016 to 31 September 2018), government statistics show the number of decisions overturned at appeal nationally for major applications was 2.2%. For this Council during the period in

question it was 3.3%, this being the result of a single major appeal being allowed out of a total of 30.

- 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 1.1%. For this Council it was 1.13%.
- 2.9 The recent monitoring period for 1 April 2018 to 31 March 2020 dealt with cumulative outturns and the information, split between major and non-major applications, can be seen below.

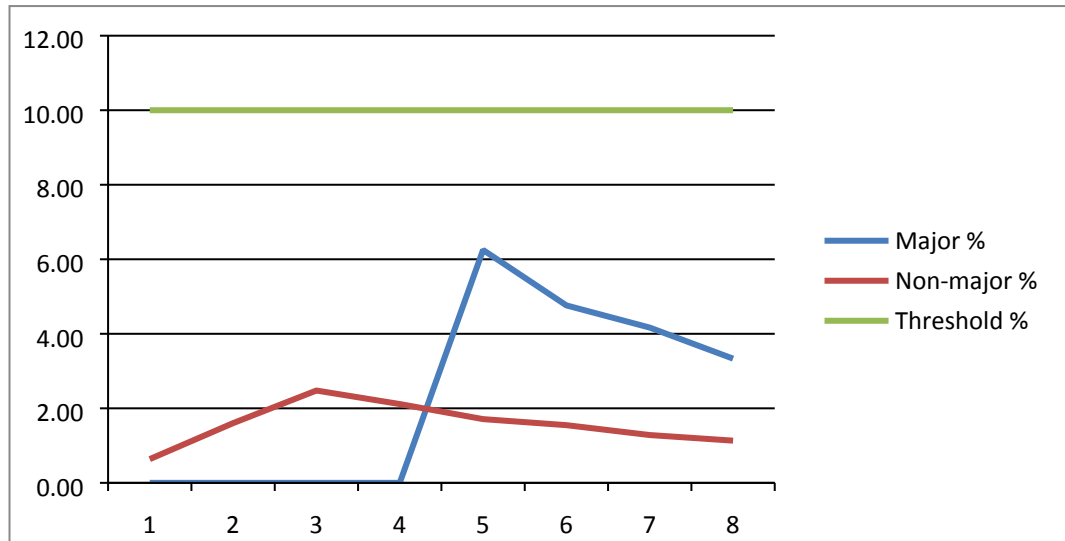


Figure 8: 'Quality of decision' 2-year cumulative outturn (April 2018 to March 2020) (%)

- 2.10 The appeals lodged against the Council predominantly relate to situations where planning permission for development has been refused (80% during the six month period), although some are lodged against the Council's failure to determine applications within the target period, the service of enforcement notices, refusal to permit advertisement consent or refusal to issue a Lawful Development Certificate, etc.. The total number of appeals lodged, by type, is set out in the graph below:

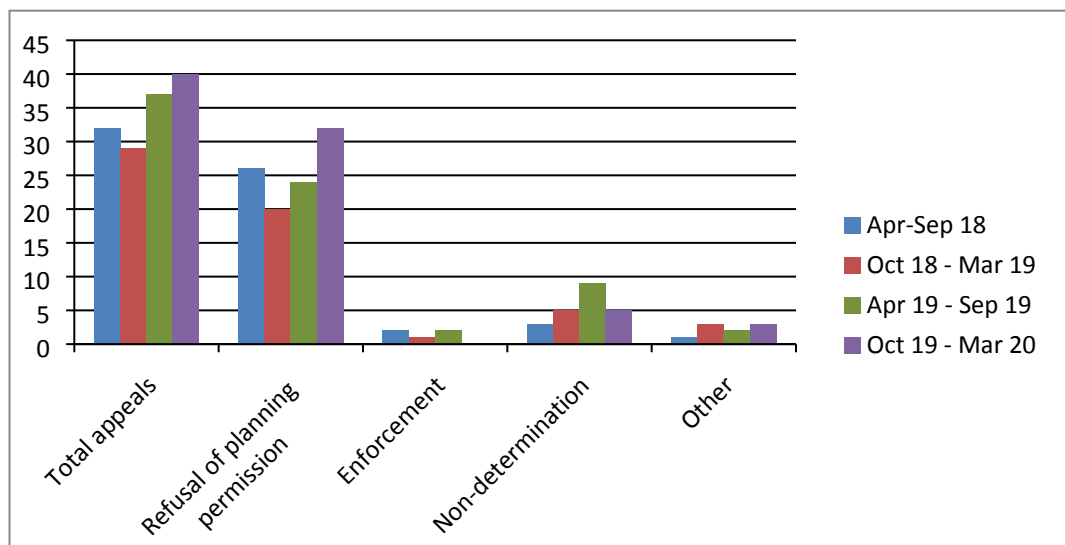


Figure 9: Appeals lodged in the period by type

2.11 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 was the subject of a Member training session on 14 January 2020, and the outcomes of appeal decisions issued over the past two years can be summarised below.

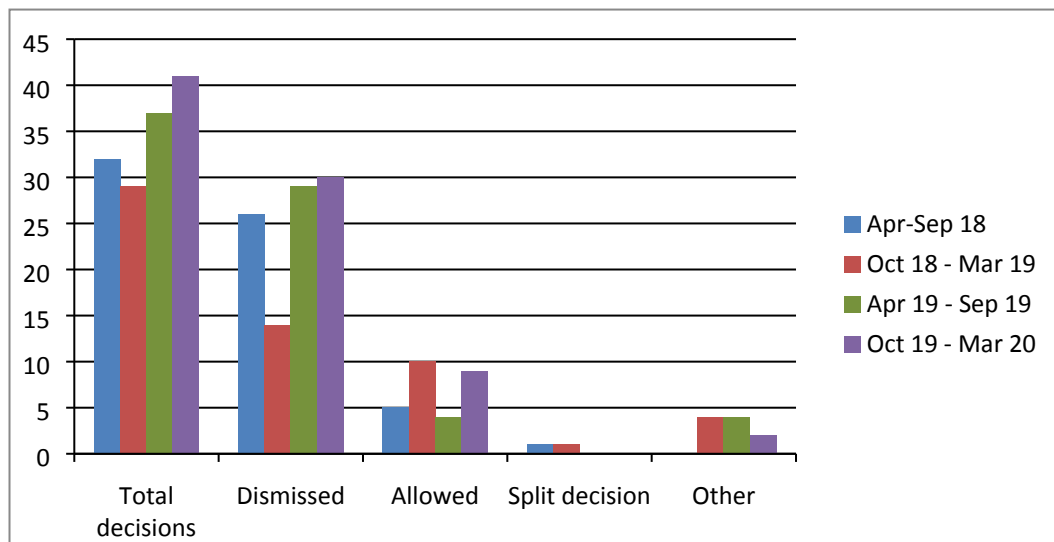


Figure 10: Appeals decisions issued in the period by outcome

2.12 As stated earlier in this report, it is possible for an Inspector, when determining an application, to award costs to or against the authority, whether sought or not. In the six month period to which this report relates, a total of five such cost awards were made against the Council, with a financial impact totalling £5,506. Details of those cases are summarised below.

Ref.	Address	Appeal type / agent	Reason for costs
20160268	Drysdale House, Wrangling Lane, Luddesdown	Non-determination of planning application / Barron-Edwards	Additional inconvenience to applicant although nothing was submitted other than application documents
20180974	Sunny Slope, Longfield Avenue, Gravesend	Non-determination of planning application / Graham Simpkin Planning	Application resubmitted after first taken to appeal and failure to submit Statement of Case.
20180632	Dalginross Cottage, Jeskyns Road, Cobham	Non-determination of LDC / Graham Simpkin Planning but appeal withdraw / not started	Additional cost and inconvenience to applicant. Whilst additional information was provided with the second application, LPA did not say that there were any objections to the original.

Ref.	Address	Appeal type / agent	Reason for costs
20190288	The Three Crutches, Old Watling Street, Higham	Against refusal of planning application / CPC Ltd.	Partial costs awarded in respect of 3 rd reason of refusal concerning alleged conflict with Policy CS16 relating to non-provision of affordable housing in the rural area or site viability.
20190686	1 Whitehouse Farm Cottages, School Lane, Higham	Appeal against condition imposed on planning application / Mr A. Mehmet	The imposition of the condition removing permitted development rights was considered unreasonable and unnecessary. Found unreasonable behaviour resulting in unnecessary or wasted expense.

Whilst avoiding cost awards cannot be guaranteed, it should be noted that, with a full staffing complement, failure to determine applications in time or submit material to the Inspectorate is far less likely and, as regards the last two awards, decisions are carefully reviewed and lessons shared amongst the team in an effort to avoid repetition.

- 2.13 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, and details of such applications are shown below.

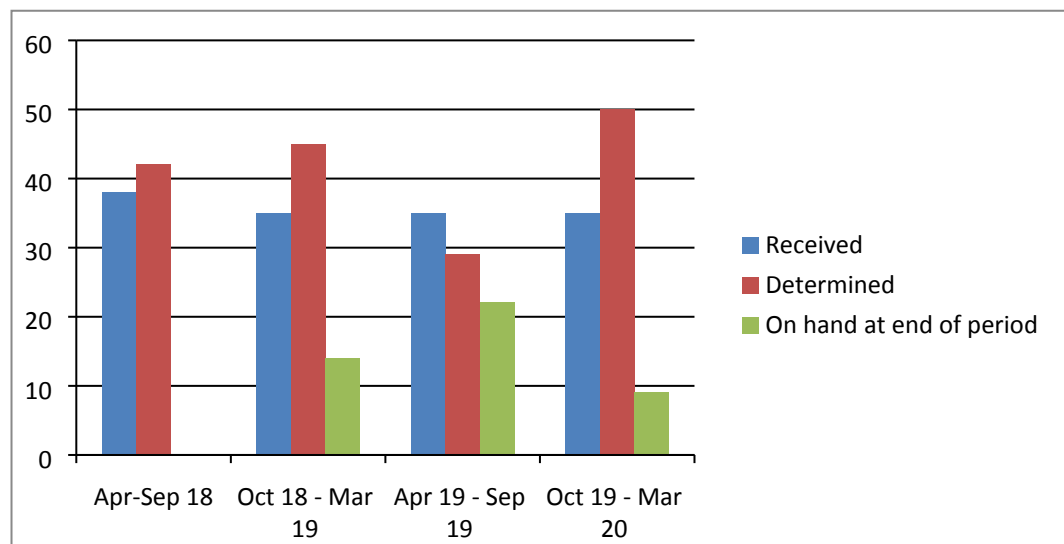


Figure 11: Applications for works to trees subject of a TPO or within a Conservation Area

- 2.14 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 despite additional resources, 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.

2.15 Planning Enforcement

In the period 1 October 2019 to 31 March 2020 the Council registered 97 new cases about alleged breaches of planning control. These are referred to as 'complaints'. This compares with 162 complaints registered in the preceding six-month period, being a 67% decrease.

2.16 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.

2.17 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.

2.18 However, to provide a snapshot of the enforcement service, the following information has been prepared to cover the full year, 2019/20, as this provides details on the outcomes of those cases closed within the year.

2.19 Two hundred and eighty-four (284) enforcement cases were closed in the twelve-month period, the outcomes of which can be summarised as follows:

Outcome	No.	%
No breach identified	106	37.3
Remediated	146	51.4
Immune from enforcement	3	1.1
Not expedient to pursue	29	10.2

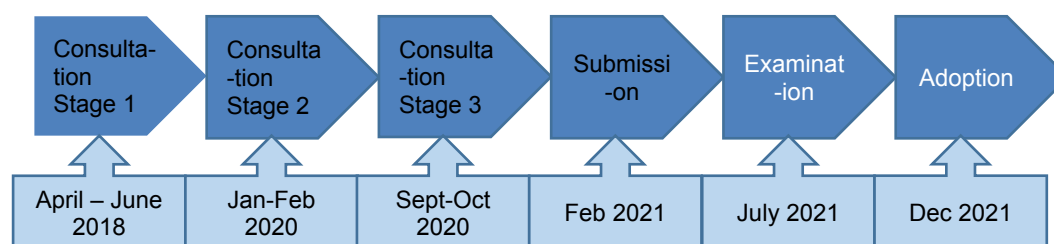
The very low number of cases closed as 'immune' from enforcement action demonstrates that potential breaches of planning control are being identified promptly (by Members, officers or the public) and investigated promptly following report / identification.

In addition, the high number of cases with a successful outcome as a result of retrospective permission being granted or the breach remedied, as opposed to formal enforcement action being necessary, is a testament to the negotiating skills of the team.

2.20 Of those remediated, 63 (43.2%) were as a result of planning permission or advertisement consent being granted and conditions discharged, and a further 4 (2.7%) gained Lawful Development Certificates. It should be noted that most of these would have been fee generating.

2.21 Planning Policy

Members will be aware that the Council adopted a revised Local Development Scheme in October 2019, the Local Development Scheme set out the Council's intent in bringing forward the emerging Local Plan (Local Plan Core Strategy Partial Review, Site Allocations and Development Management Policies documents) in a timely manner. The timetable, set out in the Local Development Scheme, is provided below:



2.22 The Regulation 18 Stage 2 consultation was not undertaken by officers at the start of the year, as work was outstanding from consultants. Progress on the emerging Local Plan was subsequently delayed as a result of COVID-19. COVID-19 resulted in the Government imposing a lockdown of the Country in late March 2020, which has resulted in significant economic uncertainty. This economic uncertainty has resulted in a number of fiscal measures being implemented by Government, which include:

- COVID-19 job retention scheme
- Small business grant schemes
- Business rates holiday for all retail, hospitality, leisure and nursery businesses for a period of 12 months
- Self-employed income support scheme
- Extending Statutory Sick Pay
- Funding for frontline charities
- Funding for SMEs undertaking research and development
- VAT payments deferral
- Various loan programmes for businesses

2.23 Despite these fiscal measures, the Office for Budget Responsibility, Bank of England and other commentators are advising that the UK economy is in a period of economic disruption that will result in a sharp COVID-19 recession during 2020. This recession is likely to be unprecedented, with unemployment rates increasing to 10% during 2020. At present, the informed view is that the UK economy is unlikely to reach pre-pandemic levels until around 2022, with some sectors of the economy seeing medium to long-term damage. This will most likely coincide with a period of lower pay, falling house prices and fewer housing completions when compared to pre-pandemic levels. As such, affordability levels in the South East and London are not expected to improve and issues such as Housing in Multiple Occupation and Concealed Households are likely to worsen. Officers are endeavouring to take these factors into account in our emerging Local Plan to ensure it is sufficiently flexible to address different scenarios as we progress.

2.24 Alongside work on the emerging Local Plan, work has been progressed in a number of other areas e.g. Supplementary Planning Documents. Supplementary Planning Documents provide further detailed guidance on policies within the Borough's adopted Development Plan. A consultation was undertaken in respect of the draft guidance in respect of the maintenance / replacement of windows and doors in Conservation Areas from 31 January to 13 March 2020. The outcome of this consultation will be reported to Cabinet in due course. Officers have also undertaken work on a Residential Extensions and Alterations Guide, which will also be reported to Cabinet prior to being consulted upon.

3. Staffing

3.1 Whilst The last two years has seen the need to use agency staff and other 'consultants' within the Development Management team due to difficulties in attracting permanent staff generally within the planning profession, the last six months has seen the appointment of new officers with both entry-level and more advanced experience, enabling us to become fully staffed once again. A number of these officers are part-time but this provides a degree of flexibility within the service. Below is a graph showing staffing changes (people as opposed to FTEs) over the past two years.

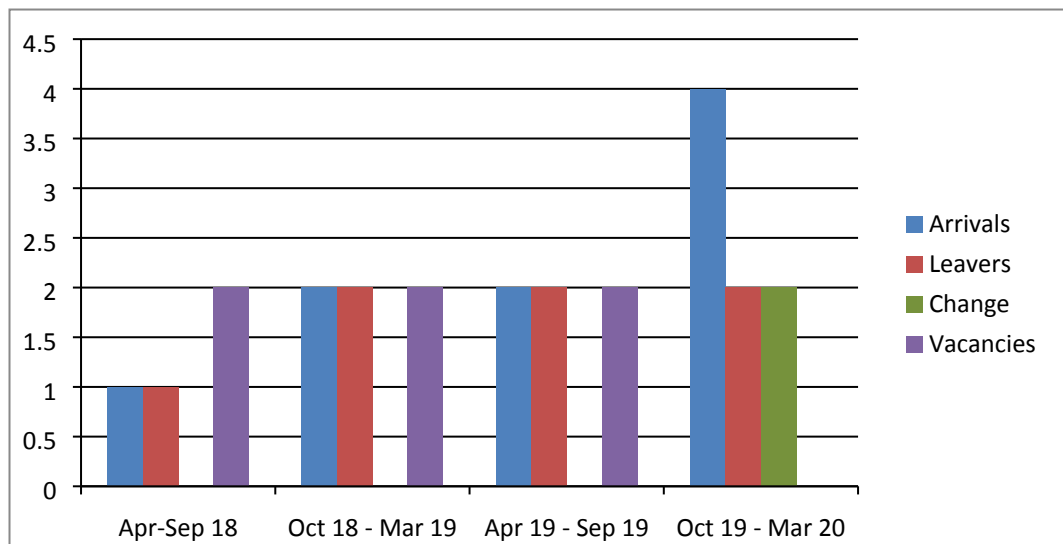


Figure 12: Staffing changes – Development Management

3.2 The Policy team has had a stable staffing structure in recent years, with just one post currently remaining vacant.

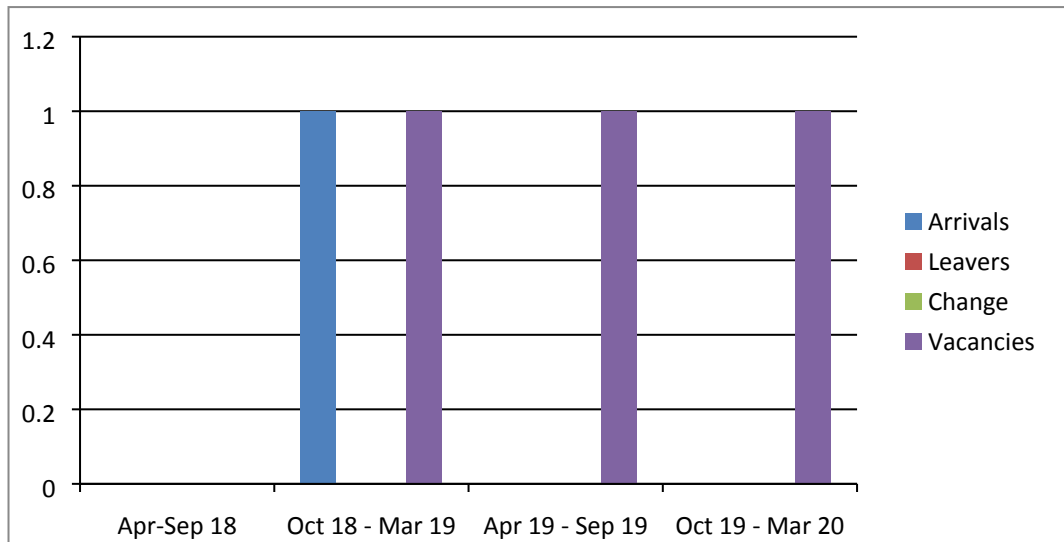


Figure 13: Staffing Changes – Planning Policy

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

4.1 In the previous report, with a particular focus on the Development Management service, improvements were set out, which have led to an improved service offered to applicants, agents and the public generally. The improvement journey has continued during the recent six-month period, and include:

- Ensuring a fully resourced and skilled workforce;
- Further investment in IT, which has enabled a near 'business as usual' service to be maintained during the recent Covid-19 pandemic;
- Adoption of a local validation list; and
- Development of guidance notes to assist applicants / agents when preparing schemes for submission.
- Enforcement Plan drafted in the light of recently issued, updated guidance. This will be brought forward for adoption during the coming months.

4.2 In addition to the above, with the assistance of the corporate improvement team, officers are responding to the recommendations proposed during the Peer Review in accordance with the actions agreed with Members. This work will be reported in due course.

5. Recommendations

5.1 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.

6. BACKGROUND PAPERS

6.1 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.