

25 May 2017

Report of	Head of Professional Services	Author	Andrew Tyrrell
Title	2016-17 End of Year Planning Performance Report		
Wards affected	All Wards		

This report sets out the figures for planning performance for the period 1 April 2016 to March 31st 2017. This includes speed of planning application decisions, which is how we are measured by the Government, appeals, enforcement actions and tree related works with some comparative data.

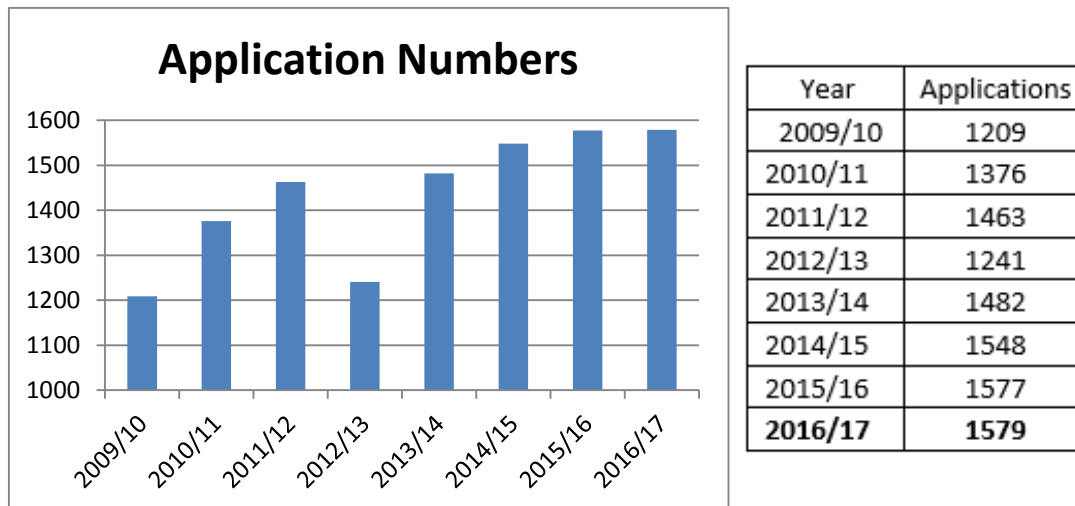
1.0 Introduction

- 1.1 The below report sets out the performance measured for various indicators of performance in the Planning service. The Government measures planning services on their level of delegation, the overall speed of decision making (National Indicator 157, or NI157) and on appeal success rates. The Council also monitor application numbers, approval rates, numbers of enforcement actions taken, tree preservation orders and various other statistics that demonstrate how the service is working efficiently and, most importantly, effectively. For comparison, performance figures have been compared back from year to year too.
- 1.2 The Growth and Infrastructure Act gave the communities secretary the option to designate any local authority that is not "adequately performing its function of determining planning applications" as underperforming, allowing planning applications to be submitted directly to the Planning Inspectorate. Councils are rated on the speed of their decision-making over the previous two years, which is measured as a percentage of major planning applications decided within 13 weeks, or any other individually agreed timescale. They are also rated on the quality of their decision-making, by reference to the percentage of major planning applications subject to a successful appeal. Several Authorities have been designated in the last few years.
- 1.3 Colchester Borough Council has good planning performance and is not under threat of being designated, or losing its planning powers. The performance is explored in detail below.

2.0 Planning Applications: "Timely Decision Making"

- 2.1 The primary measurement the Government monitors for each Local Planning Authority is the speed of their decision making. This forms National Indicator 157, or NI157. The number of applications received that count towards the National Indicators increased by a total of just 2 from the previous year and was 1,579. This was then highest number of applications since the economic downturn in 2008, albeit only just beating the previous year.

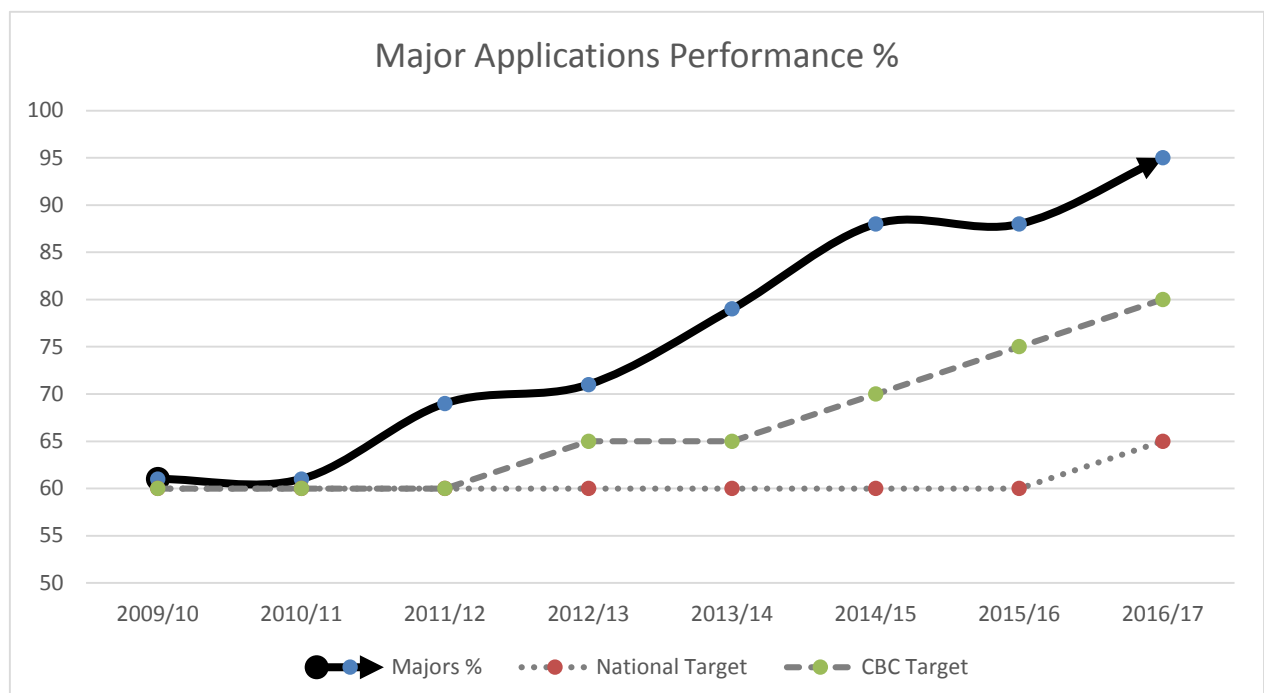
2.2 The number of applications received over recent years is shown in the table below:



2.3 This NI157 figure does not include types of application that do not count towards the Government statistics. It also does not include non-planning application work such as applications for discharge of conditions or preliminary enquiries, which are also rising and represent other work that the team undertakes. This would take the figure well over 2,000 cases per year. However, the Planning Service is monitored and measured by Government on its speed of determining certain types of application only. These are the ones included above, and break down into three types of national Indicator (NI 157) figure for “Majors”, “Minors” and “Others”.

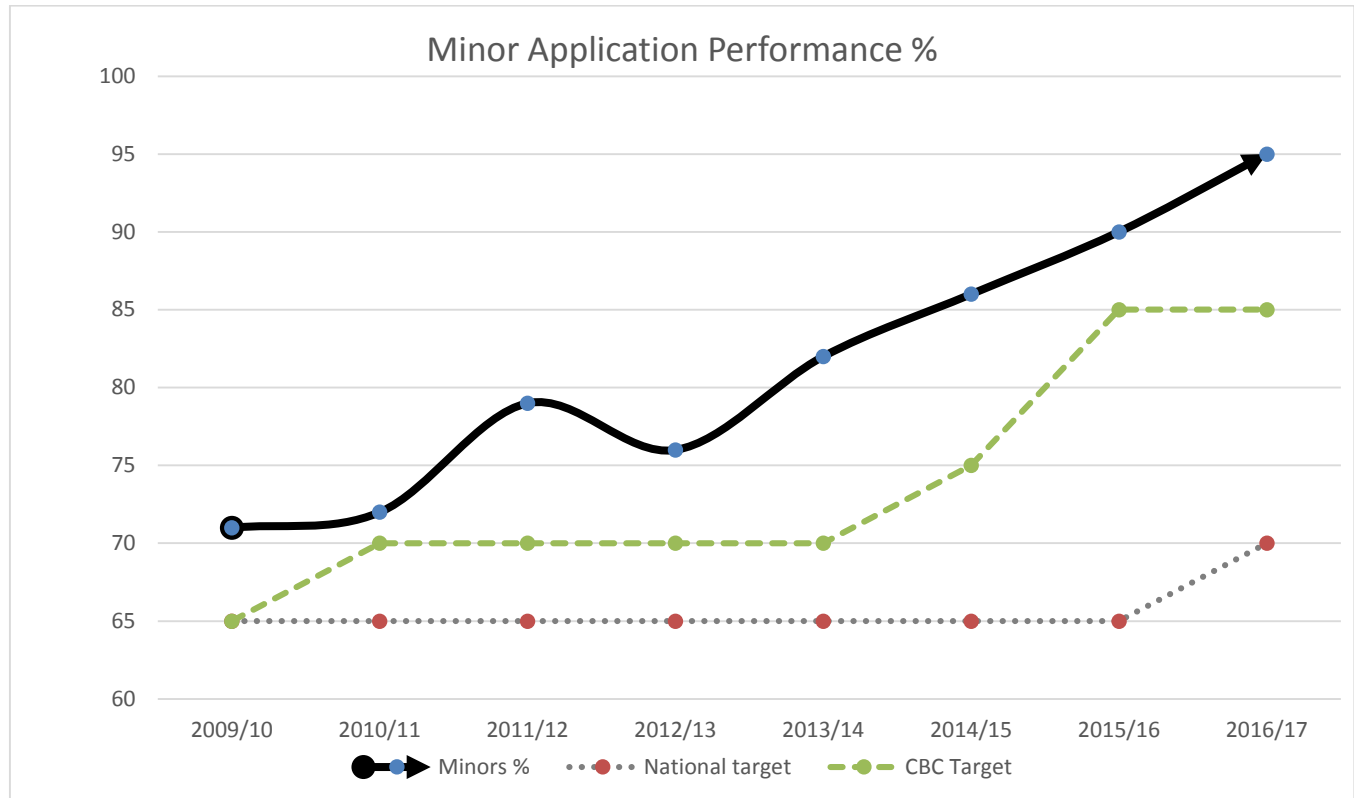
2.4 “Major” development includes residential development of 10 or more dwellings, housing sites where the number is unknown but the site area is over 0.5 hectares, non-residential development where the floorspace created is over 1,000m² and/or where the site area is over 1 hectare. It also includes gypsy/traveller sites with 10 or more pitches. The Government target is that 65% of our Major applications must be determined within 13 weeks. We would be deemed to be poorly performing if less than 60% of our major applications were determined within 13 weeks. At Colchester, we have set a more challenging internal target of 80%.

2.5 This year we finished with an achievement of 95% of major applications being determined “on (or before) time”. This is well above all targets set. This is also an improvement on previous years,

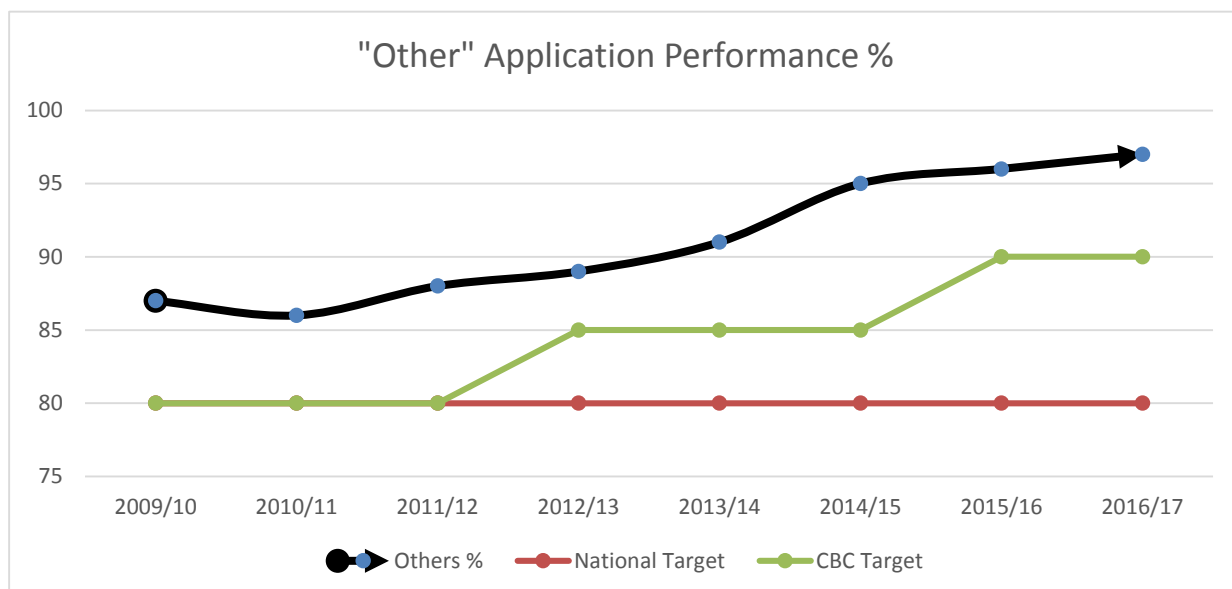


which have also seen a steady upward trend as we have improved our efficiency and made procedural changes to the way we work:

- 2.6 “Minor” applications are defined as development for 1-9 dwellings, retail/office/light industrial and other non-residential uses with floorspaces of up to 999 m², or sites under 1 hectare in area, as well as gypsy/traveller sites with 1-9 pitches. The Government deems satisfactory performance to be 70% of the minor applications decided within 8 weeks. At Colchester we have set a higher target of 85% within 8 weeks. This year we achieved 95% of our “Minor” applications being decided before their target deadlines. This is also a new record level of performance at Colchester, beating the previous years’ records as shown below:



- 2.7 “Other” applications is a category that includes householder applications (domestic extensions), change of use (with no operational development), adverts, listed building works, demolition works, certificates of lawfulness and notifications. This is the largest category in terms of quantity. The Government consider 80% should be decided within 8 weeks to be satisfactory, while we have set a target to achieve at least 90% of decisions on other applications within 8 weeks. Again, in this category we saw a new record performance level set, at 97% of applications being decided on or before their targets.



2.8 Therefore, in all three categories of planning applications we achieved our highest recorded performance levels once again. This continues a trend of faster decision making, achieved through streamlined processes, and without more resources. Overall, for 2016-17, in these categories the performance for 2016/17 was as follows:

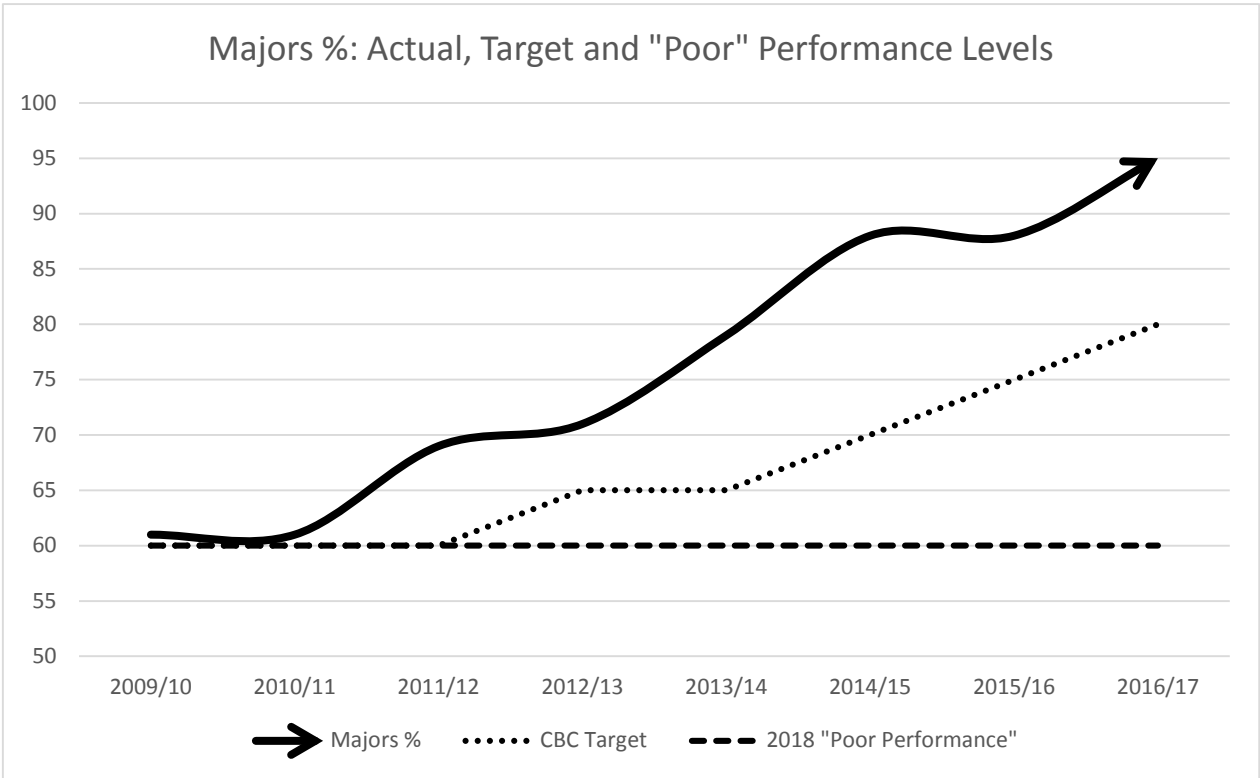
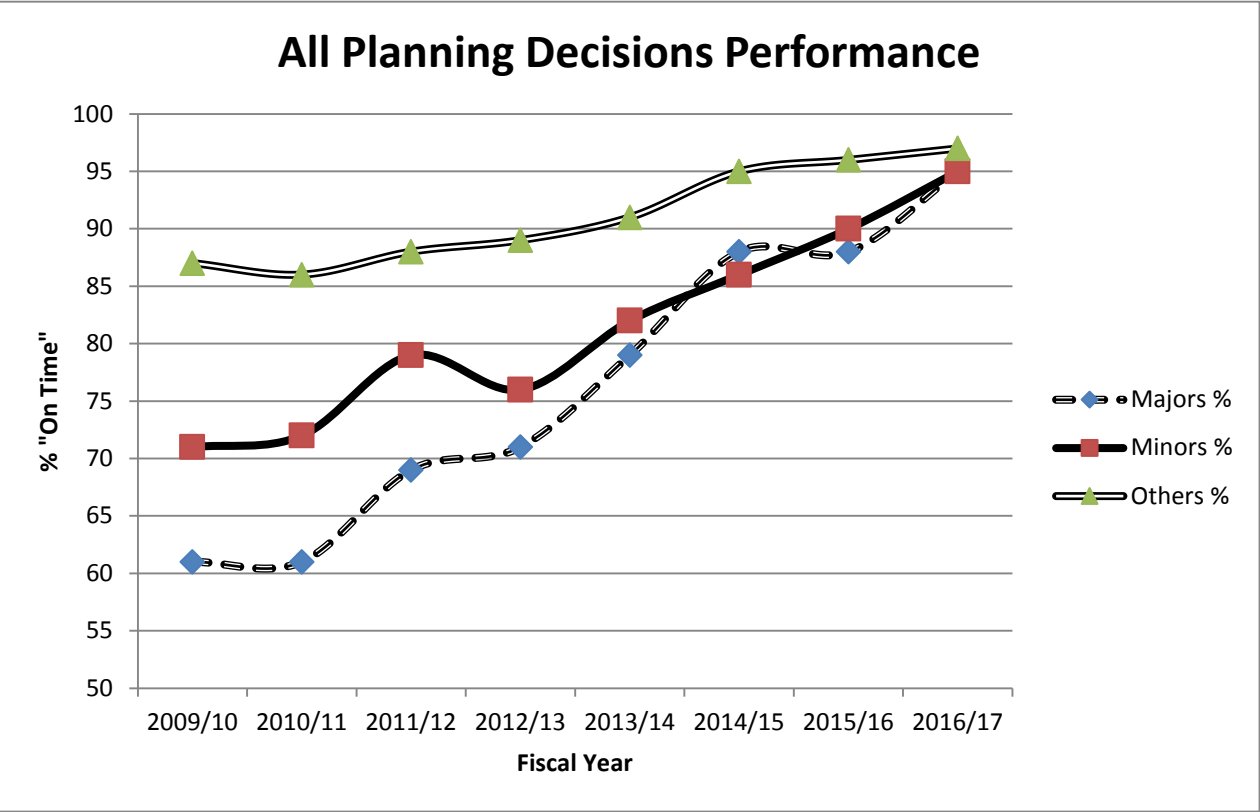
"Majors" decided "on time"	"Minors" decided "on time"	"Other" decided "on time"
95%	95%	97%

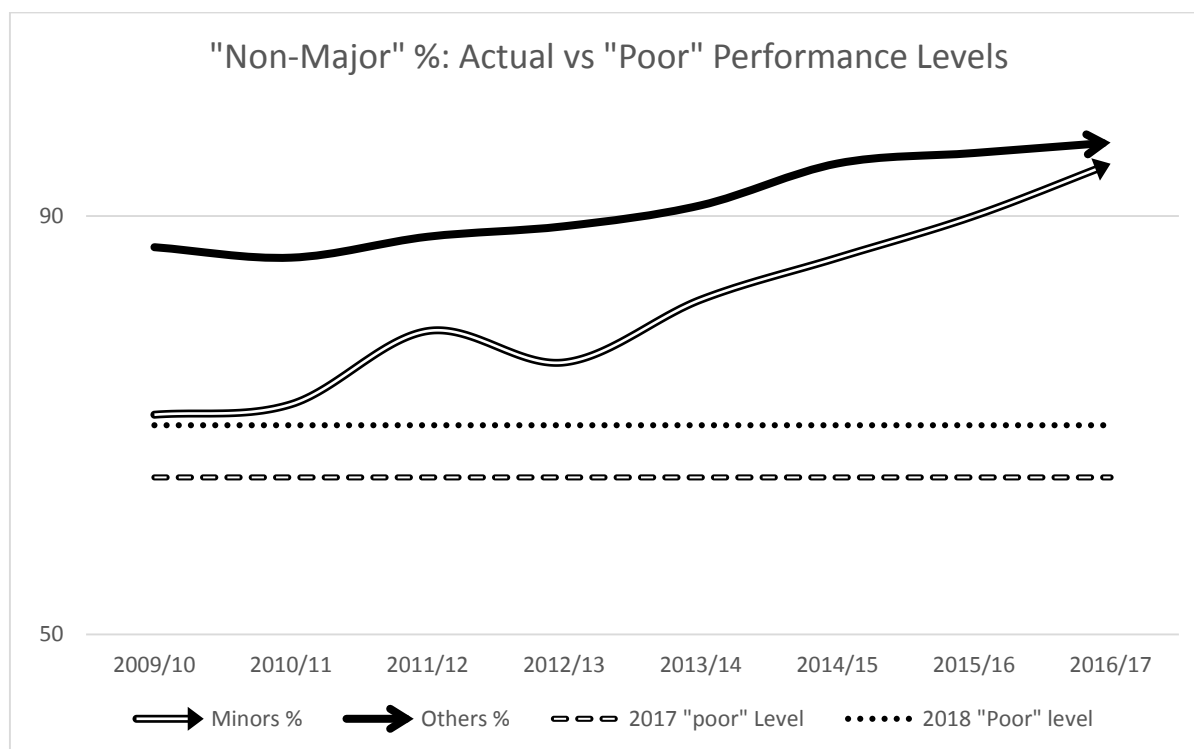
2.9 As a comparison, there has been a significant increase in planning performance since 2009, when there were restructuring and then rebuilding in light of the economic downturn in 2008. Colchester has made a number of changes to the way we work, refining processes and ensuring that they are as slick as possible so that Officers can maximise the time they spend on improving applications and negotiating improvements to the schemes we determine. The chart and table below shows all three NI157 categories over time:

Year	Majors %	Minors %	Others %
2009/10	61	71	87
2010/11	61	72	86
2011/12	69	79	88
2012/13	71	76	89
2013/14	79	82	91
2014/15	88	86	95
2015/16	88	90	96
2016/17	95	95	97

2.10 Colchester has established itself a good reputation. From 2017/18 there will be a new "poor performance" level on minor and other applications of 65%, increasing in 2018/19 to 70%. The Government will designate Councils who fall below these targets as poorly performing authorities and then applicants can choose to apply directly to the Inspectorate to decide their applications instead of the local Council. This loss of planning powers is the same penalty to the LPA if they are deemed to be poorly performing on majors (a penalty that has now existed on that front for 3 years). The figures for last year suggest that 17 Planning Authorities will lose their planning powers this year after falling below the performance thresholds over a 2 year period. At present, being designated as a poorly performing Council is not something that is a concern to Colchester. The performance figures are very high, and well above the poor performance thresholds being set as shown in the chart below for ease of viewing. For majors and minors/others Members will see that

CBC are operating well above the levels required to ensure that a good level of service is being provided. See below:





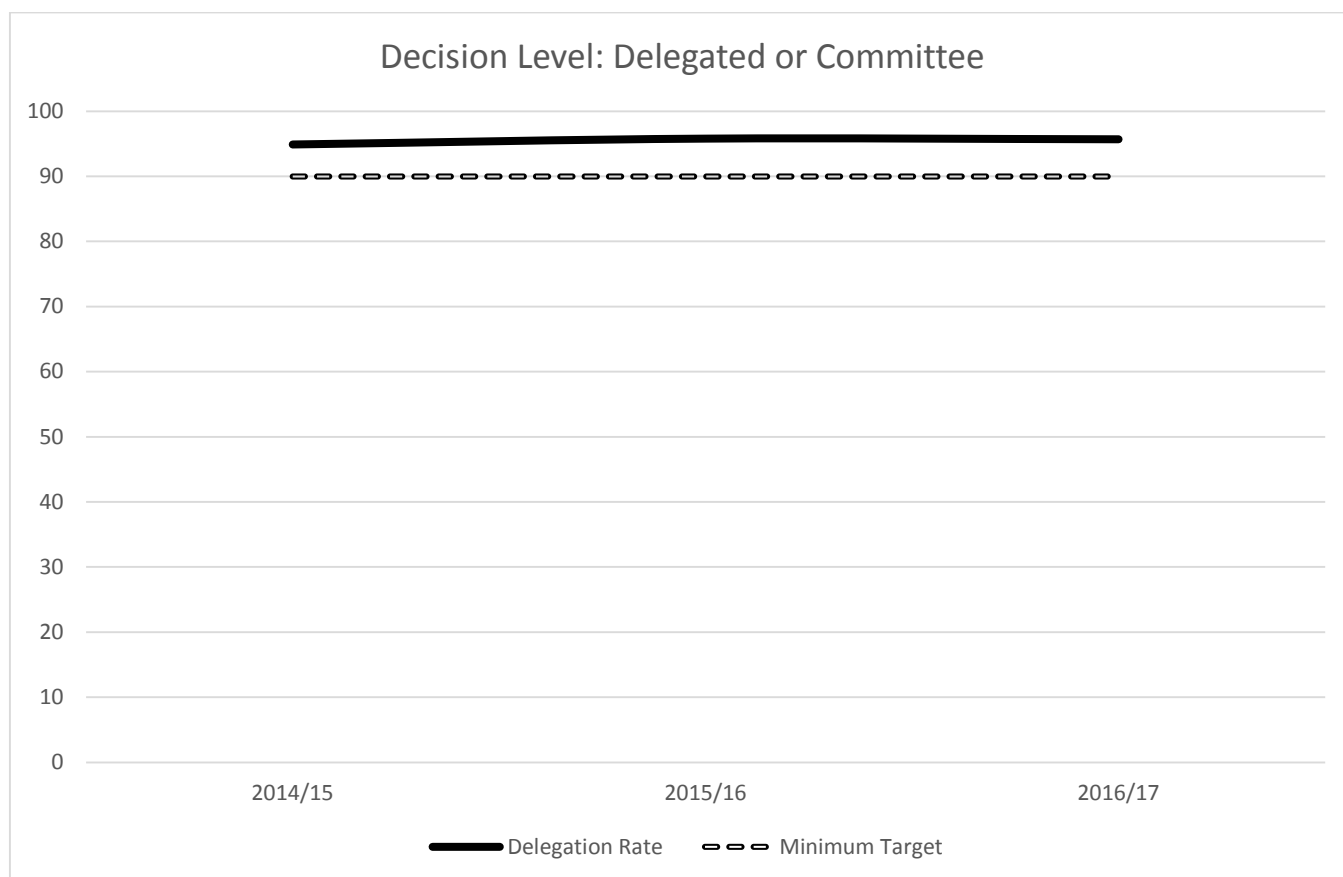
2.11 Nationally, the latest information from the Government is still that from the end of Quarter 3, from 31st of December 2016. At this time, Colchester made the 26th highest number of “minor” and “other” decisions on planning applications in the country, out of 336 Local Planning Authorities. This demonstrates how busy the Authority is and places us in the top 1% of authorities in terms of number of planning decisions taken. Colchester was 23rd in the ranking for speed of decision. This means that we receive the 26th highest number of applications in the country and are the 23rd fastest authority on deciding minor and other applications. The only Council from within East Anglia to better our 95% performance was Thurrock, who achieved 96.9%; although they decided less than half as many applications and do not have a comparable workload. The next best authority from Essex was Epping Forest, who achieved a performance of 93.6% and were ranked 35th. Chelmsford were ranked 43rd, and achieved 93.2% of their decisions on time, while Ipswich placed 47th on 92.8%.

2.12 On other issues, the Council had a number of complaints against its decisions from third parties. This is not unusual. A few of these proceeded to the Local Government Ombudsman. Whilst details of those cases cannot be detailed herein, the Council has not had any faults found in the way that it operates and all cases against the Council have been thrown out by the Local Government Ombudsman. This has been the case for several years now too.

3.0 Level of Delegation

3.1 The Government advocate that most decisions should be taken by professional planning officers. However, they also advocate that planning should be open to democratic decisions because of the impacts that they can have on so many people and for so long. They set a target that at least 90% of decisions should be taken by officers, whilst no more than the 10% most controversial or significant applications should be subject to the full scrutiny of the Planning Committee and its elected Members. That ensure that delays and expense are avoided on most cases but ensure that there remain public accountability for contested or major decisions.

3.2 Colchester historically struggled to achieve this, but since call-in procedures were introduced (approximately 6-7 years ago) it has since met this target. The chart below shows the level of delegation, and demonstrates that last year 95.7% of decision were taken under delegated powers. This means that the Scheme of Delegation meets the targets set for efficient planning practice and ensures that the Committee was able to focus on the applications that mattered most to the public.



- 3.3 Over the last three years the rate of delegation has stayed fairly constant around 95%. In the 2014/15 year 94.9% of decisions were taken by officers (5.1% by the Committee), which rose to 95.8% in 2015/16 and then fell slightly to 95.7% last year (2016/17).

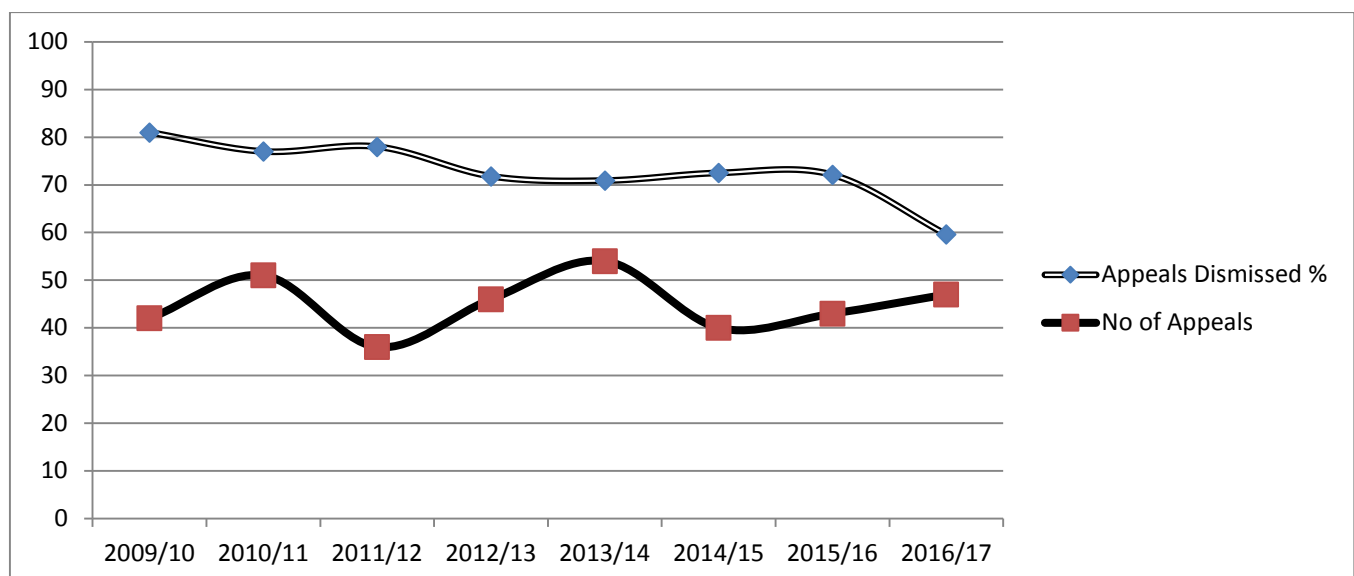
4.0 Appeals

- 4.1 In terms of Appeals, performance the number of appeals has been reasonably constant year upon year. In terms of fiscal year, the last year saw 47 appeal decisions, which was equivalent to 3% of our decisions being appealed. Nationally the figure is 3.4% on average, so the number of appeals against our decisions was lower than the national average.
- 4.2 The Planning Inspectorate can deal with an appeal in one of three ways; through written representations, an informal hearing or by ordering a public inquiry. In all cases the function of an appeal is to examine the local authority's decision on the planning application and an inspector is appointed to preside over the appeal and take the final decision. Written representations is the most common appeals method, wherein the inspector reaches a decision based on written submissions from the planning applicant, the local authority and any objectors. If an informal hearing is called, evidence for and against the development is given orally, but in a less formal setting than at a public inquiry. If a planning application is controversial, it may be dealt with at a public inquiry, the most formal and adversarial of the three options. This later route involves cross examination by legal professionals in most cases and can last several days or even weeks.
- 4.3 The data we hold on types of appeal is recoded by calendar year (not fiscal year). The calendar year figures for the type of appeal, are given below:

Type of Appeal	2013	2014	2015	2016	2017 to date
Written Representations	63	36	44	40	10
Informal Hearing	4	3	5	0	0
Public Inquiry	2	1	2	3	0
Grand Total	69	40	51	43	10

The above is solely based on decisions received, so does not include undecided cases such as Tollgate (which was a substantial Public Inquiry within this year). What can be seen from this is that, typically, most of our appeals are dealt with through the written representations procedures, where there is usually a reliance on the officer reports and the decision notice, as opposed to any additional statements or evidence.

- 4.4 Looking at appeal performance, in 2017 the final appeal success rate was 59.6%, measured against a target of 70%. This means that the performance on appeals was below target for the first time in many years. This is also now fairly typical of the national trends, with the average number of appeals dismissed by the Planning Inspectorate falling to 66% this year, from 68% the year before. This does put Colchester below average on appeals, though far from any risk of being designated.
- 4.5 It is clear that the Inspectorate are being more permissive, which we are informed follows Government instructions to encourage more growth, allow more jobs and build more homes. The issue with this is that it should not be at the cost of quality, or “anything anywhere”. We have tried to hold a constant line with previous years in terms of what we deem to be acceptable, and have continued to allow development when it is the right development in the right place at the right time.
- 4.6 To demonstrate this, Colchester has allowed 87% of the planning applications decided last year. Nationally the average permission rate is 88%, so directly comparable to the rate of approval at Colchester. The rate of appeal is also comparable. So while Colchester is allowing as much as it usually does, and receiving the same rates of appeal that we have, we are now finding that the Inspectors are allowing more development that we consider to be unacceptable. Despite this, the inspectorate are not awarding costs against us, which means that they still consider our decisions to be logical and sound in planning terms. We have recently challenged two decisions which were of particular concern but await the outcome of this. We are also monitoring the qualifications of Inspectors, as they do not seem to be as well-matched to the issues being appealed as was the case a few years ago.
- 4.7 Whilst performance has dipped, the intention is to “hold the line” and insist on the same amount of quality in our developments as we have previously sought, as a minimum. We do not intend to follow the more permissive approach at this time. This is because we are worried at the legacy that this will leave for the next hundred years, and beyond. To put the appeal performance into context, and to compare the decline in appeal success rates over previous years, the chart below shows both the number of appeal decisions received year on year, and the percentage of those appeals dismissed.

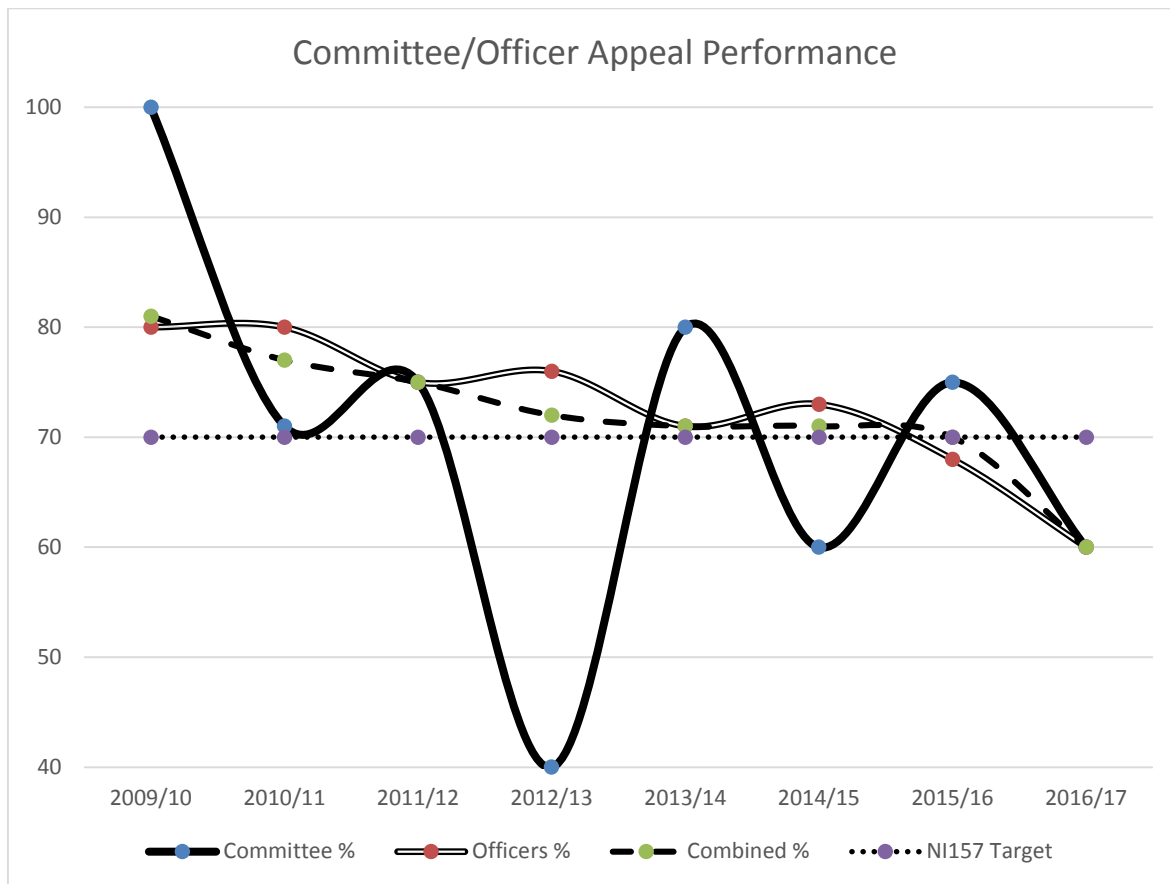


- 4.8 As stated above, despite the downturn in performance at appeal in terms of outcomes, the Council is not getting cost awards against us. There are only 2 costs awards against us from last year; one of which relates to a Committee decision at Holmwood Solar Farm. Members will recall that this

was allowed because the Council could not evidence a claim that it would cause highway safety issues for pedestrians who would have no path to walk on when construction vehicles passed. Officers had advised at the time that the Highway Authority had raised no concerns, but the officer recommendation to approve the application was overturned by the Committee against that advice. Officers are still disputing the costs with the appellants so we cannot provide any figures for this decision yet. A second costs claim was awarded against the decision to refuse the extended hours at Qube after our Environmental Protection team recommended refusal based on noise and disturbance. At appeal they could not prove that noise complaints nearby had originated from people leaving Qube, and not other premises in the town. Consequently the Inspectorate allowed the appeal and gave a costs award against us for failure to Evidence this reason for refusal. Again, this has not been settled yet.

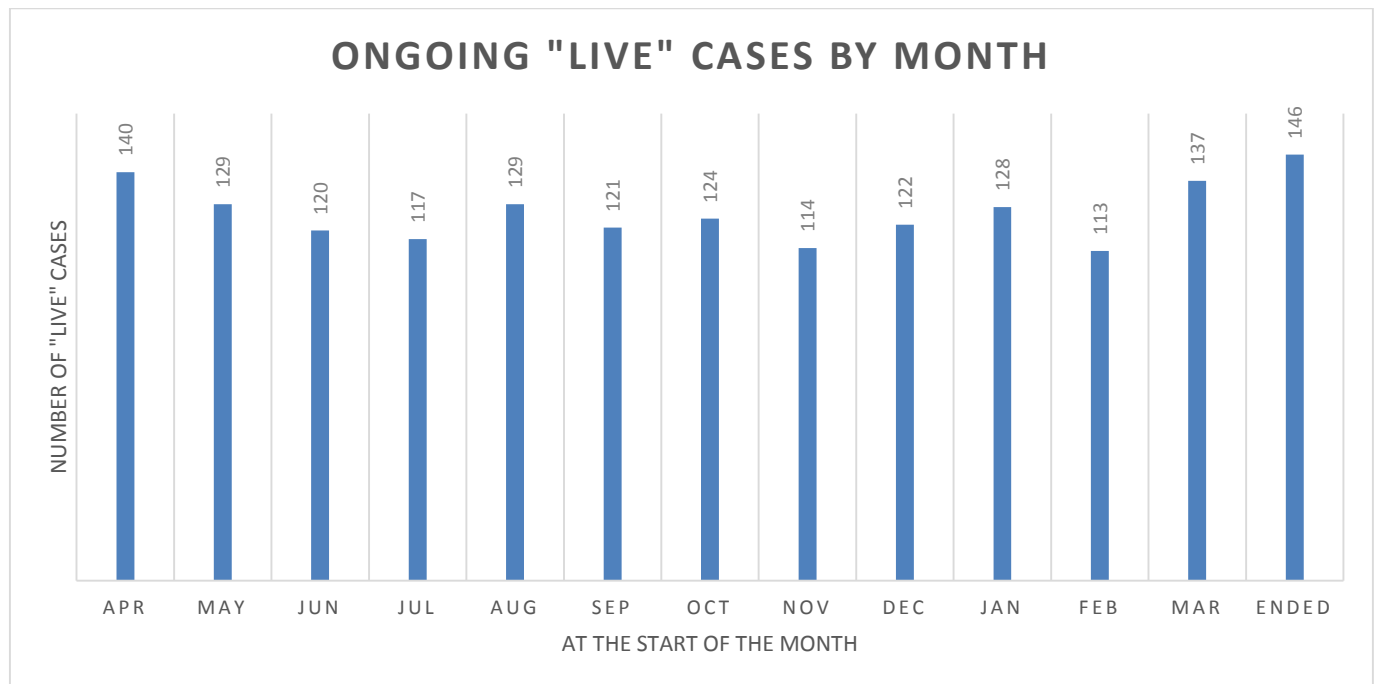
4.9 We have also broken down the appeals record over this time into officer decisions, committee decisions, and the combined levels. The figures for this are set out in the table below:

Fiscal Year	Committee % dismissed	Officers % dismissed	Combined % dismissed	NI157 Target	Number of Committee Decisions Appealed
2009/10	100	80	81	70%	1
2010/11	71	80	77	70%	7
2011/12	75	75	75	70%	4
2012/13	40	76	72	70%	5
2013/14	80	71	71	70%	5
2014/15	60	73	71	70%	5
2015/16	75	68	70	70%	4
2016/17	60	60	60	70%	5



5.0 Enforcement

- 5.1 There were 518 new enforcement cases reported during the year. There were 512 cases closed during the year. There were consequently 6 more cases somewhere within the process of being investigated and resolved at the end of the year than compared to the start of the year. In total the number of "live" enforcement cases at the close of day on 31st of March 2017 was 146. This is quite high, however there was a "spike" in February through some connected work with licensing unauthorised dog kennelling/boarding activities that are now under investigation for not having planning permission. There were 27 cases to investigate, which remain ongoing at year end.



- 5.2 Within these cases there are several ongoing legal cases, which are either awaiting hearings or trial at court and cannot be closed, or where notices have been served but the time for compliance has not yet expired, as well as cases that are relatively new or under discussions to seek amicable resolutions if this is possible.
- 5.3 Generally the team is able to resolve cases as quickly as they receive new cases to investigate. The level of resources for planning enforcement therefore seems to be appropriate for the amount of work generated by current levels of complaints. However, capacity is limited for any additional proactive enforcement work, such as actively monitoring conditions on approved schemes, where we still rely on public reports of wrong-doings. The team is resources as it has been for a decade now, with 3 members of staff, which is enough to respond reactively and on the basis that if something is causing harm then someone will tell us. This is the current reality for most Councils and is not an unusual situation.
- 5.4 Work that has been done this year includes some strong activities. The figures for notices served are set out in the table below:

Planning Contravention Notices (PCNs)	6
Enforcement Notices	7
Breach of Condition Notices (BCNs)	9
Stop Notice	0
Temporary Stop Notice	1
Demolition Notice	0
Injunctions	0
Section 215 Notice ("Untidy Sites")	0
Section 330 (Requisite Information Notice)	5
Total	28

- 5.5 The figures highlighted in bold in the table are ones that have “more significant” consequences. BCNs are served when planning conditions imposed on approved developments have not been complied with. There is no right of appeal against a BCN, therefore the service of a notice results in compliance with the condition or prosecution for failure to comply. All 9 of these notice represent either resolutions to breaches, or have resulted in people being prosecuted (or in the process of being prosecuted). The Council has not lost any court cases related to enforcement cases within recent years, including last year when only one case needed to be taken and court and has already had an outcome (there are some pending cases awaiting trial dates, or for verdicts on penalties to be issued following guilty pleas, that will now roll into the current year although they were instigated last year).
- 5.6 An Enforcement Notice for works in the curtilage of a listed building had also been prepared but was not served within the last year so will carry forward into this current year’s figures.
- 5.7 With regard to Enforcement Notices, these result in breaches of planning control being resolved through formal action. They are used when there is no relevant condition to apply (because the breach may not be on a site that had planning permission). Although they also result in unauthorised development being removed, they have the disadvantage that they can be appealed. This can add delays between serving a Notice and seeing the harm resolved. Last year there were 2 Enforcement notices that were appealed and the appeals on these were both dismissed. At the year-end there were 3 ongoing appeals that we were awaiting decisions from the Inspectorate. There were also 2 more Enforcement Notices that have not been appealed, but where the time for removing the breach has not yet expired. It is hoped that they will be complied with but if not these will turn into prosecutions within the current year.
- 5.8 At the year-end we had not lost any appeal against an Enforcement Notice, which is a stretch that has lasted for some years now. The enforcement team “won” both appeals against Notices issued. Regardless of the delays, this still means that the Notices served by the enforcement team have resulted in the removal of unauthorised buildings, or the cessation of unauthorised uses of land without planning permission on 16 occasions last year. These actions have removed breaches that were causing grievances to adjacent residents and land owners, and have restored some “quality of life” for those suffering from the results of breaches.
- 5.9 Added to this, a number of breaches were also removed without the need to serve a formal notice upon the offending parties, and through use of negotiations to get the unauthorised building removed, or unauthorised uses ceased amicably. We have no way to record these in the current system but we are moving to a new system later this year when it will be possible to record resolutions without formal notices. These would be significantly more than the 16 formal actions.
- 5.10 In addition, the Temporary Stop Notice had a significant effect. A Temporary Stop Notice means that work on a site must be ceased immediately and for a period of 28 days. This is used on urgent occasions to either (1) bridge a gap until a permanent notice takes effect (because a minimum of 28 days must be given before the enforcement notice takes effect); or (2) where works are taking place that could cause irresolvable damage to planning interests if they continue. As well as the Stop Notice that was issued, another site saw the breaches ceased after just the threat of us issuing a Stop Notice, which demonstrates that we do not always have to issue a notice to achieve the outcomes we seek.
- 5.11 The prosecution the Council succeeded in was against an estate agent who displayed more than one advert at a house for sale which is contrary to the advert regulations and therefore an offence immediately without needing to serve any Notice. The court success resulted in a £600 fine for the offence itself, with a £60 victim surcharge and the offenders being forced to pay our legal costs of £350 (£1010 in total costs). There are 6 more Estate/Letting Agents that are facing prosecutions 2 have already said they will be pleading guilty, whilst 1 is contesting the charge that they displayed unauthorised adverts and will therefore face trial. As we have clear evidence of offences being committed, we expect to be successful in all cases (as there is no defence if an offence occurred, it either did or did not happen).

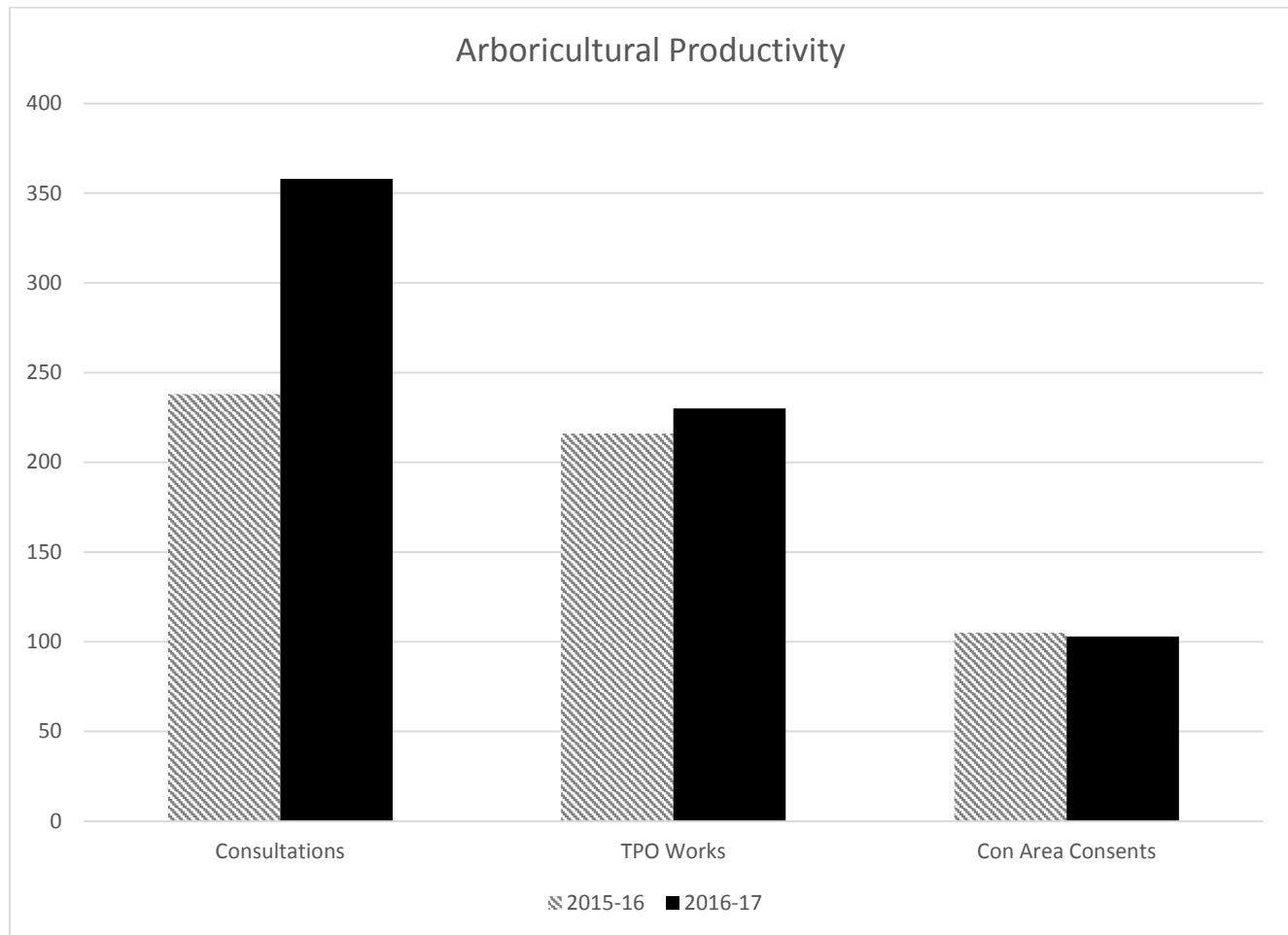
- 5.12 In terms of ongoing court actions at the year-end (31st of March); a hearing held at Colchester Magistrates on 21st March led to a full trial after a “not guilty” plea. This will now roll into the 2017/18 year, whilst Tesco (Highwoods) hearing was adjourned on the same day, but Tesco have now indicated that they will be pleading guilty at the hearing that is now scheduled for May but that falls outside of this year end performance report as do several others. We had a number of prosecutions in April 2017 for example that are not included in this report although the work was initiated last year. Finally, there are 2 pending applications for court injunctions, which will now fall within 2017/18 figures.
- 5.13 That said, in all cases, the enforcement team has to decide if a breach is expedient to enforce. Sometimes a breach may cause no harm, other than a sense of wrong-doing because the right processes have not been followed (for whatever reason). Even when we ask for an application to be submitted to regularise development that has no planning permission but is considered to be potentially acceptable, we do not receive the applications. In those cases we have to take a decision whether or not to serve a Notice, or to close the case because although there is a technical breach, there is no actual harm being caused. The Planning Committee may recall that we introduced a clear policy on how we will operate that system, and this allows us to decide when to take no action against a breach. People who are then aggrieved because they expected us to take action but we have chosen not to can complain to the Council, and ultimately they can complain to the Local Government Ombudsman.
- 5.14 The enforcement team was found to have “No Faults” within Local Government Ombudsman investigations into complaints about the service, when we had not taken action because we felt that there was no resultant harm caused to anyone. Details of cases reported to the LGO are to be kept confidential, so unfortunately no further information can be given about any specific complaints about the service in case they would help identify the complainant. What we can say is that there were few cases where decisions not to act were not accepted by the original complainants, but that when this has happened in the last year we have been found to have made logical decisions, based on evidenced justifications, and to have acted entirely appropriately in closing cases without further “action”.
- 5.15 We are therefore satisfied that, based on all of the above, we act when breaches warrant action, we can justify when we feel it is not appropriate to take action, and our general enforcement practices are robust, and sound in the approaches taken. This year’s 16 formal notices is less than, although comparative to last year, when we served 18 formal notices. As a comparison benchmark to other Local Planning Authorities, Members will recall that last year we were ranked 18th in the highest number of enforcement actions of all of the planning authorities in the country (including the London Boroughs, national parks and other authorities who may not be comparable to us) and that we were the 2nd most active in serving notices of the “shire districts” behind only Stratford-upon-Avon. The end of year stats will not be available until later in this year, however at the end of the Q3 figures (to December 31st 2016) we were ranked against 201 LPAs the Government were benchmarking us against and were 37th in the table for Enforcement Notices (ENs), and were again 2nd highest in terms of the number of Breach of Condition Notices (BCNs). We also made the 10th spot for serving “stop notices or temporary stop notices” from the single Notice we served (i.e. only 10 LPAs had used this more extreme measure within the first 9 months of the year).

6.0 Trees

- 6.1 At the start of the last fiscal year the Arboricultural Planning Officer was moved back into the planning service, from Community Services (after 3 years away). This move has seen a number of changes to the way we work, and alignment of some tree and associated planning procedures.
- 6.2 The work produced this year (and last year) is set out in the table below:

Type of Work Produced	2015-16	2016-17
Planning Application Consultation Responses	238	358
Decisions on Applications for TPO Works	216	230
Determined Consents for Works to Trees in Conservation Areas	105	103
New Tree Preservation Orders Issued	3	11

This is then shown in the chart below:



6.3 What can be seen from the data above is that this past year has seen a rise in the productivity and output in terms of planning related tree work. There was a 49.5% increase in the number of planning applications that the tree officer was able to provide expertise on from 2015/16. There was also a 266% increase in the number of Tree Preservation Orders served, some of which were generated directly from sites that were under pressure of development without the trees being retained. There was a 6% increase in the number of people who applied for works to TPO trees, and this saw a 12% increase in the number of people we were able to work with to ensure that trees were pruned or maintained with the correct approval. At the same time there was an increase of 7% in the number of refusals to do works to TPO trees. The increase in both refusals and approvals was coupled with a reduction in withdrawn applications, meaning more people got an answer, one way or the other.

7.0 The Planning Website

7.1 In other work areas, at the start of the performance year we had just introduced some wholesale changes to the website in order to make it easier to “self-serve”. Other websites were checked for things that other Councils did that we did not, as well as a raft of new pages written to help members of the public understand the planning process more easily. A Forum was held to launch this to architects and agents, whilst it was also used in the new member training after the 2016 elections. The feedback on this from regular customers (who Officers have been directing to use the website to find answers to general questions and other policies and guidance) was also good. This has helped free time for officers which they spend negotiating more changes to improve schemes, adding more value to the planning process than offered by general enquiry contact.

7.2 The service does not have data on contact recorded, but the Customer Service Centre, who also benefitted from the changes do. Their data shows that there has been a reduction on contact via telephone despite the fact that application and preliminary enquiry (PEs) numbers have increased.

Therefore while we have been dealing with more customers we have had less calls from them to find answers.

- 7.3 The number of phone contacts was reduced by 7.5%. This in turn meant that the CSC recorded 55% less calls being abandoned by customers compared in February to the previous year (before the changes) and an average wait time for planning calls of 30 seconds, compared to 64 seconds for the same month a year earlier (before the website changes), a 54.5% improvement in the waiting time for customers making calls about planning.
- 7.4 There are a number of further improvements planned for this next year as we change our IT systems and benefit from the removal of some constraints from our current packages.