



Report to Planning Committee 8 June 2023

Business Manager Lead: Lisa Hughes – Planning Development

Lead Officer: Richard Marshall, Senior Planner (Enforcement), richard.marshall@newark-sherwooddc.gov.uk

Report Summary	
Report Title	Quarterly and Year End Planning Enforcement Activity Update Report
Purpose of Report	<p>This report relates to the performance of the Planning Enforcement function of the Planning Development Business Unit over the three month period January to March 2023 as well as providing an overview of the performance and achievements across the financial year.</p> <p>To provide Members with examples of cases that have been resolved (both through negotiation and via the service of notices) and to provide details and explanations of notices that have been issued during that period.</p>
Period covered	Quarter 3 of the 2022/ 2023 financial year (1 st January – 31 st March 2023) and providing an overview of the performance and achievements across the financial year.
Recommendation	That Planning Committee notes the contents of the report and the ongoing work of the planning enforcement team.

1.0 Background

1.1 What is planning enforcement?

Planning enforcement is the investigation of alleged breaches of planning control and, where a breach of planning control is identified, the aim is to resolve these using the most appropriate action. NSDC is responsible for enforcing control for all planning matters other than matters relating to minerals or waste disposal which are the responsibility of Nottinghamshire County Council.

The backbone of the planning system is planning enforcement. Equally as important as the plan makers and the development managers, planning enforcement is there to ultimately preserve the integrity of, and public confidence in, the planning system by ensuring that development accords

with the rules. Without it our environment, both built and natural, suffersⁱ. In short, without enforcement, our places, our environment and our quality of life would all be the poorer.ⁱⁱ

At its heart, the planning system relies on trust and our enforcers provide the backbone of this trust – trust that those who flout our planning laws (and often other laws at the same time) will be brought to account; trust that those who strive for high quality will not be undermined by those who would deliver ill-planned and ill-designed development; and trust that the high quality schemes that achieve planning permission will be delivered with that same quality – that planning will deliver what is promised.

Parliament has given Local Planning Authorities (LPA's) the primary responsibility for taking whatever enforcement action they consider necessary in the public interest in their area. Enforcement action is discretionary, however a LPA's duty to investigate an alleged breach of planning control is not.

Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates. All enforcement cases should be investigated properly, and the following key questions answered:

- Is there development?
- Is there a breach?
- Can the breach be resolved through negotiation?
- Is the breach causing harm?
- Is enforcement expedient?

Negotiation is a key skill of any enforcement officer and in the majority of cases breaches can be resolved through this process. However, as soon as it becomes clear that a breach cannot be resolved amicably, and that there is ongoing planning related harm that is contrary to the public interest, enforcement officers may use enforcement powers to remedy the breach (in accordance with the Council's Scheme of Delegation).

1.2 This report

This report relates to the final quarter from the 1st January to the 31st March 2023 providing an update on enforcement activity during this period, including cases where formal action has been taken. It also includes case studies which show how the breaches of planning control have been resolved through negotiation, and Notices that have been complied with.

The report also includes key figures relating to overall planning enforcement activity for the 2022 – 2023 financial year.

Schedule A outlines the enforcement activity in terms of the numbers of cases that have been received and closed throughout 2022/2023 (refer Chart 2) and also provides a breakdown of the reasons that cases have been closed over the same period (Chart 3). Charts 4 and 5 show the performance of the enforcement team when compared against time limits set out within Newark and Sherwood District's [Planning Enforcement Plan \(PEP\)](#) in both Q4 and over the course of 2022/2023.

Chart 6 sets out a breakdown of the Notices that have been served by the enforcement team during Q4 and throughout the 2022/2023 period.

Schedule B includes a small number of examples of where formal planning enforcement action has been taken (such as a notice being issued).

Schedule C provides just a few examples of how officers have resolved breaches through negotiation during the last quarter.

2.0 SCHEDULE A – OUTLINE OF ENFORCEMENT ACTIVITY

Members will note from Chart 1 that the enforcement team has continued to be extremely busy, with significantly more cases having been received this year than compared to the previous 2021/2022 period.

As well as investigating more cases than the previous year, Officers have found that many of those cases have become increasingly complicated or unacceptable in planning policy terms, leading to 39 Notices having been issued in 2022/23. 21 appeals were received throughout 2022/23, compared with only 8 in 2021/22. Of the 21 lodged, only two have been determined by the Planning Inspectorate, stalling progress on the remaining 19. This complexity of cases and delays from the Planning Inspectorate perhaps explains the reduced numbers of cases being closed compared to the previous year.

The planning enforcement team provide an update on enforcement related activity on a quarterly (and annual) basis. Over the previous 3 quarters the team has reported a number of these cases have led to successful prosecutions and multifaceted injunctions having been obtained for matters including non-compliance with Enforcement Notices, or unauthorised works to protected trees.

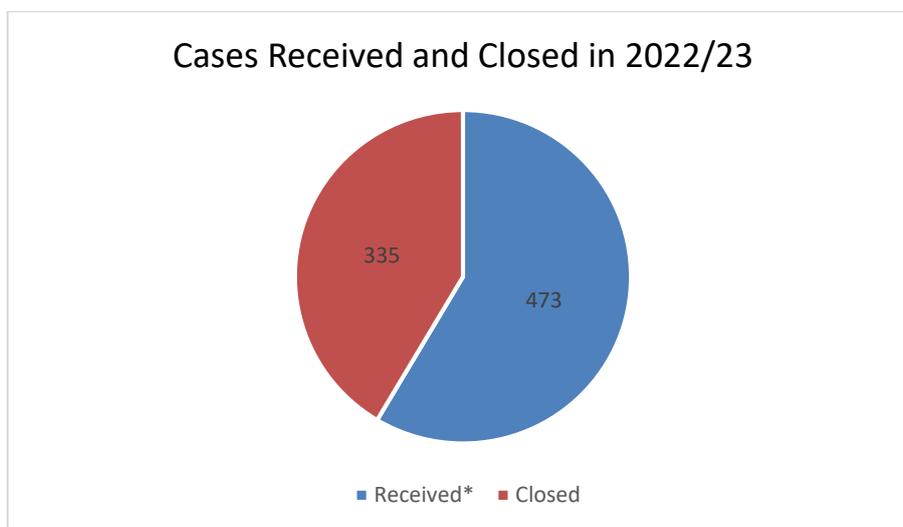


Chart 1 – Case numbers received and closed over 2022/2023

* 26 of these are Heritage at Risk cases under review by Conservation Officers as part of the Heritage Action Zone project

Members will also note in Chart 2 that the majority of cases reported are not a breach of planning control. Particular attention should also be paid to the number of cases that have been resolved through collaborative efforts with landowners. Where those efforts have not been successful, Officers have issued, where it is deemed expedient to do so, a large number of Notices across the 2022/23 financial year.

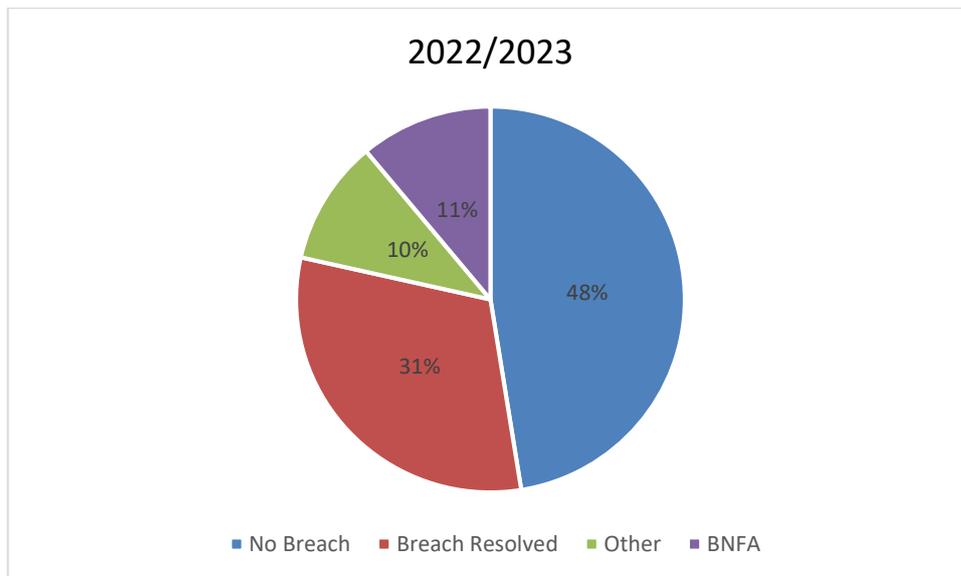


Chart 2 – Reasons why enforcement cases have been closed during 2022/2023

Whilst there are not nationally recorded ‘performance’ statistics for planning enforcement, figures of the number of enforcement notices that are issued are documented on an annual basis. The figures for the period of 1st January to 31st December 2022 have recently been published by the Department for Levelling Up, Housing and Communities (DLUHC) and these demonstrate the extensive nature of the ongoing work undertaken by the planning enforcement team. Whilst the total numbers served is not a direct indication of ‘success’ of planning enforcement activity, the aim being to resolve a breach as opposed to punish a contravener, they do nevertheless demonstrate the level of activity and complexity of cases investigated. Members will note (Chart 3) that the planning enforcement team at Newark and Sherwood have served a significantly greater number of enforcement notices over the latest recorded period (43) compared to the other authorities within Nottinghamshire (the next highest being Broxtowe with 5). It must also be noted that NSDC has issued almost a third of all notices within the East Midlands (156) area and more than double the next authority (Leicester, 18). Again, this further demonstrates not only the amount of work undertaken by the team, but also the complexity of cases as many of those notices issued result in an appeal against the Council’s decision.

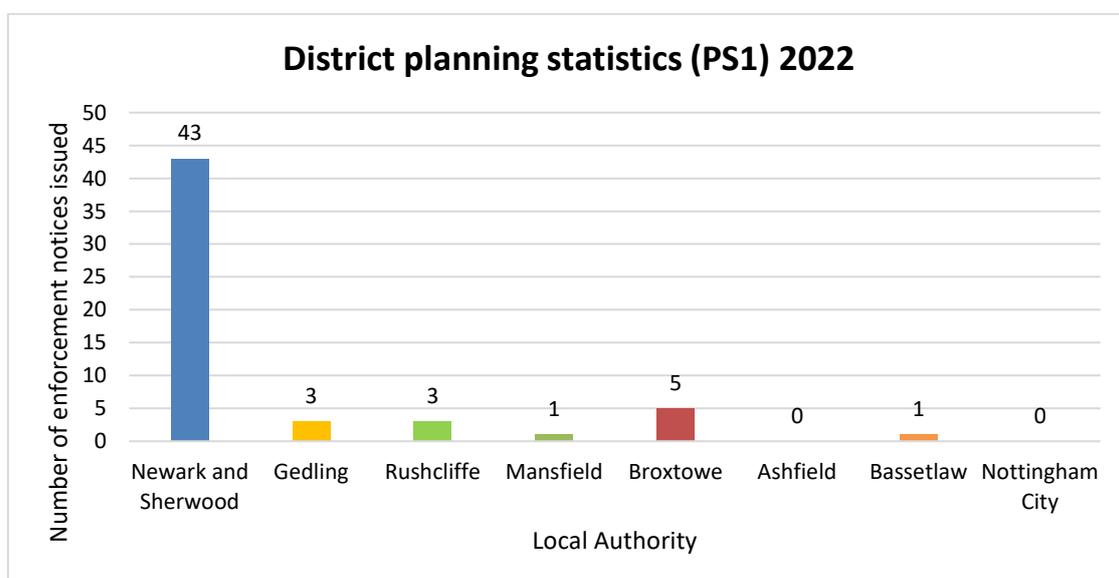


Chart 3 - Number of Enforcement Notices Issued by Nottinghamshire Authorities (1st January 2022 to 31st December 2022)

In addition, in September 2020 the Planning Enforcement Plan (PEP) was adopted. As well as setting out how the enforcement service will operate and what Members and the public can expect from the service, the PEP also put in place a system of case prioritisation which encompassed targets for initial investigations to take place. A summary of the system of prioritisation, and the priority performance standards, are set out in the table below:

Priority	Complaint type (example)	Investigation commencement timescale*
A (High)	<ul style="list-style-type: none"> Demolition in a Conservation Area or unauthorised works to a Listed Building; and Unauthorised works to protected trees. 	As soon as possible and in any case within 24 hours of receiving the case
B (Medium)	<ul style="list-style-type: none"> Unauthorised development that significantly impacts on local amenity and public safety; Unauthorised development that results in harm to the character of a Conservation Area or letting of a Listed Building; Certain unauthorised operational building works, changes of use and breaches of conditions; Erection of unauthorised advertisements that have a detrimental impact on highway safety. 	Within 14 days of receiving a complaint.
Low (C)	<ul style="list-style-type: none"> Running a small business from a residential property; 'Other' unauthorised advertisements; 'Minor' unauthorised operational developments such as fences/ walls and 'other' householder developments; and Untidy land and buildings. 	Within four weeks of receiving a complaint

** Timescales commence from the first working day after a complaint is received. Weekends and bank holidays are therefore not counted.*

Members will note from Chart 4 that despite the consistently high number of enforcement cases being dealt with, and the previously explained complexity of those matters investigated, the team has been working with continued commitment to achieving the highest standard of attainment and has reached close to a 100% compliance, at 98.7%, with the targets set within the PEP over the Q4 period, and 96.1% across the year. This not only demonstrates the quality and dedication of the teams' efforts, but also the ongoing efforts for productivity and efficiency.

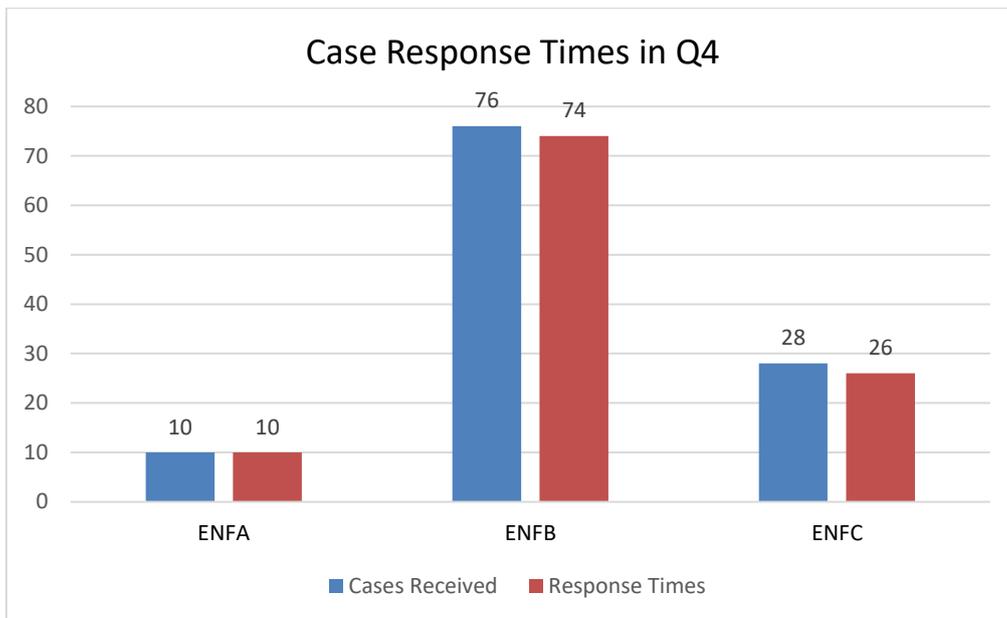


Chart 4 – Enforcement response times in Q4 of 2022/2023

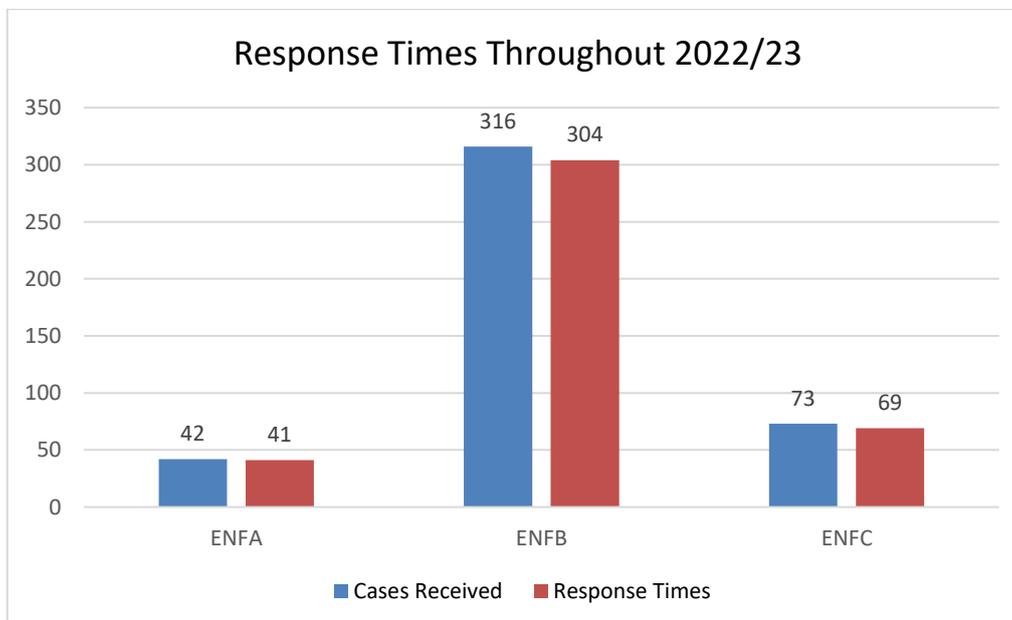


Chart 5 – Response Times 2022/2023

Outcomes in Quarter 4 and across the year

	January	February	March	Total
Notices Issued	6	0	4	10
Notices Complied With	0	0	2	2
Appeals Lodged	0	2	2	4
Appeals Determined	2 (both upheld)	0	0	2

Table 2 – Details of planning enforcement notices issued and complied with during Q4 of 2022/2023. Also included are details of appeals relating to enforcement notices.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
Notices issued	5	17	8	10	40
Notices complied with	3	1	2	2	8
Appeals lodged	4	11	5	4	24
Appeals determined	2	0	0	2	4

Table 3 – Details of planning enforcement notices issued and complied with during each quarter of 2022/2023. Also included are details of appeals relating to enforcement notices.

A description of the various notices within the planning enforcement ‘toolkit’ is contained within Appendix 1. The total numbers of each type of notice issued during Q4 and across the 2022/ 2023 year are set out within charts 6 and 7. Again, both of these demonstrate the high level of enforcement activity being undertaken.

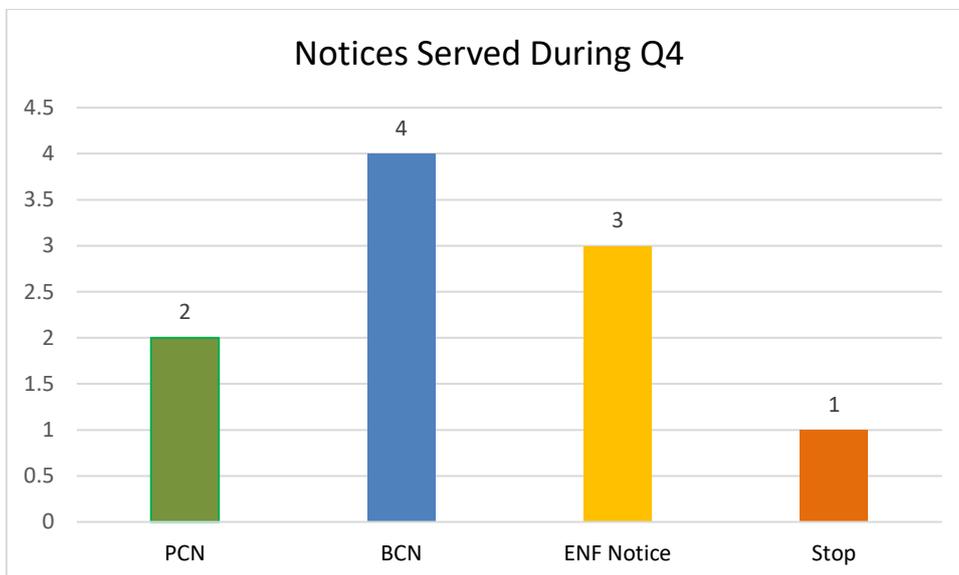


Chart 6 – Notices Served During Q4

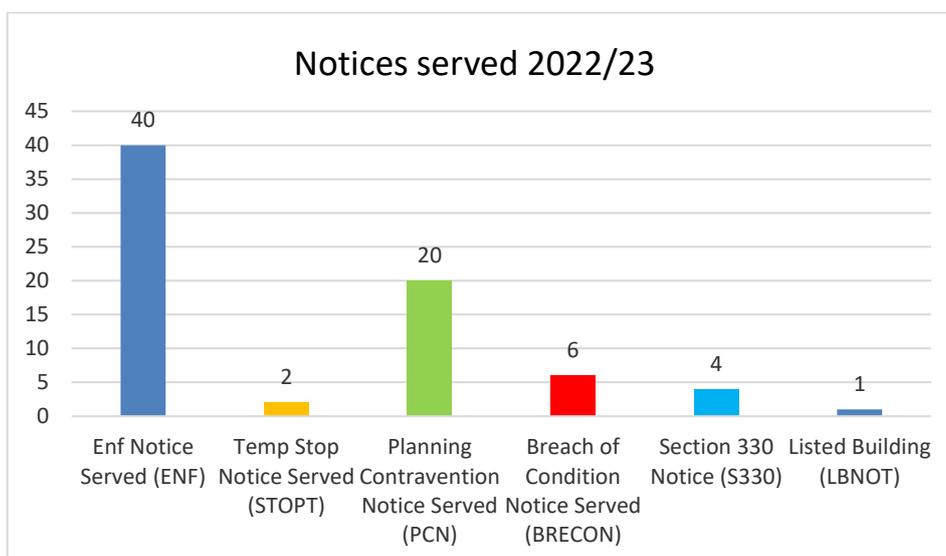


Chart 7 – Notices Served During 2022/2023

3.0 SCHEDULE B. FORMAL ACTION TAKEN

Enforcement Ref: 22/00405/ENFB

Site Address: The Troc, Beacon Hill Road, Newark

Alleged Breach: Breach of Conditions

Action To Date: A Temporary Stop Notice and a Breach of Condition Notice Issued

Background: Planning permission was granted in 2018 for the demolition of two bungalows and the enlargement of The Troc care home.

Officers were made aware that protective fencing had not been erected around trees that were due to be retained, and that landscaping and boundary treatment works did not align with the approved plans, appearing to be the beginnings of an unauthorised car park rather than soft landscaping as required.

A Temporary Stop Notice and a Breach of Condition Notice were issued requiring work on the site to cease until such time as protective fencing had been erected, and that compliance with the approved landscaping scheme be adhered to.

A further application seeking to finalise and regularise works to create an additional (overflow car park) was retrospectively submitted (reference 23/00179/FUL). This application was refused. Officers are corresponding with the developer to try and resolve the additional breach of planning control (creation of the car park) in addition to issues identified with the previously approved scheme.



Enforcement Ref: 22/00096/ENFB

Site Address: Newark Road, Kilvington

Alleged Breach: Unauthorised Residential Building

Action To Date: Enforcement Notice Issued

Background: Planning permission was granted in 2009 for a small building to house chickens. The building was constructed in 2018/19 with a range of domestic features including windows, patio doors, insulated loft space, lighting and internal layout.

An application seeking to change the use of the building to a holiday let was refused, and a second application seeking to retain the building as an agricultural unit was declined to be determined.

Enforcement Officers determined that the building was not built in accordance with the intended use of the 2009 permission (to house chickens), and so determined the entirety of the building is unauthorised. An Enforcement Notice has been issued requiring its demolition. The serving of the enforcement notice and planning decision is now the subject of an ongoing appeal.



Enforcement Ref: 22/00096/ENFB

Site Address: Yew Tree Way, Coddington

Alleged Breach: Unauthorised Removal of TPO Trees

Action To Date: Prosecution and Tree Replacement Notices Issued

Background: This case relates to 3 tree preservation orders covering an area of woodland. In late 2021 works were undertaken to protected trees on site without first seeking consent from the Local Planning Authority (LPA).

Officers found that large amounts of vegetation had been removed from the land along with the intentional felling, cutting back and damage of protected trees on the site. The case was brought before Nottingham Magistrates Court where 3 persons were found guilty (following guilty pleas to two charges). The Court sentenced all defendants and imposed fines and costs. The LPA has also recently served tree replacement notices requiring the replanting of lost specimens at the site.



July 2020



January 2022

Enforcement Ref: 20/00045/ENF

Site Address: Old Hall Farm, Greaves Lane, Edingley

Alleged Breach: Excavation of a Reservoir

Date Received: February 2020

Action To Date: Enforcement Notice issued November 2021

Background: As part of a wider investigation and enforcement action into a number of issues at this site, Officers were made aware that a large irrigation reservoir had been excavated without planning permission (outlined in blue within the aerial photograph below). A retrospective application was submitted for consideration (21/01114/FUL) but refused on account of failure to demonstrate or justify its need, scale or structural stability. A planning Enforcement Notice was issued in conjunction with the refusal. The issue of the enforcement notice was the subject of an appeal, which was later dismissed.

Previously planning enforcement notices had been issued requiring the residential use of the land to cease, including within the barn building outlined in red in the aerial photograph below.

An interim injunction was granted by the Courts in November 2022 requiring that the lake/reservoir to be emptied in a prescribed methodology.

A further injunction was granted in March 2023. The injunction requires the remaining water to be emptied from the lake/ reservoir, the lake/ reservoir to be infilled and the residential use of the land (including the barn building) to cease.

Members will continue to be updated with progress of the investigation, including efforts to improve the appearance and condition of the land which is also the subject of a formal notice and ongoing court proceedings.



4.0 SCHEDULE C: EXAMPLES OF BREACHES RESOLVED WITHOUT FORMAL ACTION

Enforcement Ref: 22/00206/ENFB

Site Address: Cheyne Drive, Bilsthorpe

Alleged Breach: Unauthorised Business from a Residential Property

Background: Officers received complaints about the amenity impacts resulting from a business operating from a residential property. A considerable number of online orders were being processed, with resulting deliveries and packages being received and sent from the property throughout the week. Officers liaised with colleagues in the Economic Development team to assist the landowner to secure the rental of an industrial unit from which to relocate the business, resolving the breach of planning control.

Enforcement Ref: 23/00050/ENFB

Site Address: Back Lane, Barnby in the Willows

Alleged Breach: Incorrect Materials

Background: Officers were made aware that the brickwork used on the construction of a single storey rear extension did not match the existing brickwork of the dwellinghouse as required by a grant of planning permission, leading to an unacceptable visual contrast. Instead of needing to rebuild the rear extension, officers worked with the developer to have the bricks stained to match the existing dwelling, resolving the breach.



Before



After

Enforcement Ref: 23/00095/ENFA

Site Address: Home Farm Close, Kelham

Alleged Breach: Unauthorised PVC Door in a Curtilage Listed Building

Background: Conservation Officers were made aware that a modern uPVC door had been installed in a grade II listed dwelling in Kelham. Officers liaised with the owner and an application for Listed Building Consent to replace that door (which was inappropriate on this historic building) with a timber door was approved and recently installed.



Before



After

Enforcement Ref: 21/00111/ENFM

Site Address: Land at New Lane, Blidworth

Alleged Breach: Alleged noncompliance with landscape condition (20/00475/FULM)

Background: Planning permission was previously approved for the development of 81 dwellinghouses and associated infrastructure. As part of the approval numerous conditions were imposed which required landscaping details to be submitted and works carried out at specific points of the development being undertaken.

Within the site is an area of public open space (POS) which bounds the rear gardens of a number of existing dwellinghouses that adjoin the site. Within the approved landscape plan is a requirement for a native species hedge to be planted along the boundary between the POS and the neighbouring properties. The landscape scheme was designed so as to protect the privacy of the neighbouring properties as well as adding to the biodiversity of the wider development site (Members being aware of the importance of native species hedgerows).

In undertaking the development, the developer duly provided the POS (following ongoing discussions with members of the Enforcement team) but failed to initially provide the approved landscape planting (including the boundary hedge). Discussions between officers and the

developer resulted in the initial stages of the landscape scheme being provided, including the boundary hedge, which officers hope will eventually lead to an increase in privacy for residents.



5.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

ⁱ RTPi beginners guide to planning enforcement - <https://www.rtpi.org.uk/media/9895/beginners-guide.pdf>

ⁱⁱ RTPi planning enforcement handbook - <https://www.rtpi.org.uk/media/10004/nape-planning-enforcement-handbook.pdf>