

Report to Planning Committee 7 December 2023

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Report Summary	
Report Title	Quarterly planning enforcement activity update report
Purpose of Report	<p>To update Members as to the activity and performance of the planning enforcement function over the first quarter of the current 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	1 st July – 30 th September
Recommendation	That Planning Committee accept the contents of the report and note the ongoing work of the planning enforcement team.

1.0 Background

This report relates to the second quarter of 2023/24 from the 1st July to the 30th September and provides 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 where Notices that have been complied with.

Schedule A outlines the enforcement activity for Q2 in terms of the numbers of cases that have been received and resolved (Charts 1 & 2) and also provides a breakdown of the reasons that cases have been resolved (Chart 3). Charts 4 and 5 details the performance of the enforcement team when compared against time limits set out within the Newark and Sherwood District Planning Enforcement Plan (PEP) in Q2 and since the targets were first set.

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 dialogue and negotiation during the last quarter. Schedule D provides examples of Notices having been complied with.

2.0 **SCHEDULE A – OUTLINE OF ENFORCEMENT ACTIVITY**

Review of number of enforcement cases received and resolved

Members will note from Chart 1 that the enforcement team has received an exceptionally high number of cases this quarter - which routinely occurs over the summer period – but the team has nevertheless resolved many more cases than would typically be expected over a quarter (the extent of this high level of activity being apparent from Chart 2 which shows the level of activity over the previous 2 years).

Members will note from Chart 2 that the team received approximately 44% more cases received during Q2 for the current year compared to the same period during 2022/23. Pleasingly, over that same period 84% more cases were resolved. Whilst these figures include several enforcement cases that were received following a series of complaints submitted by the same complainant, as part of an ongoing campaign against the decision of the Council to enforce against their property, given the increased efforts to investigate the additional cases it is an extremely gratifying figure and demonstrates the team’s ongoing dedication to improvements in the service provided.

Chart 3 sets out the reasons why cases have been resolved in Q2; the predominant reason for which is that the allegation made to the team is not a breach of planning control (meaning works being undertaken without, or in breach of, the relevant permissions and consents that can be issued by the Local Authority). These cases nevertheless require Officer resource to inspect the alleged breach and make an assessment. Despite this large number of cases, Officers have continued to rectify a considerable number of breaches of planning control (35) through negotiation or take formal enforcement action where necessary (10), some significant examples of which are contained later within this report.

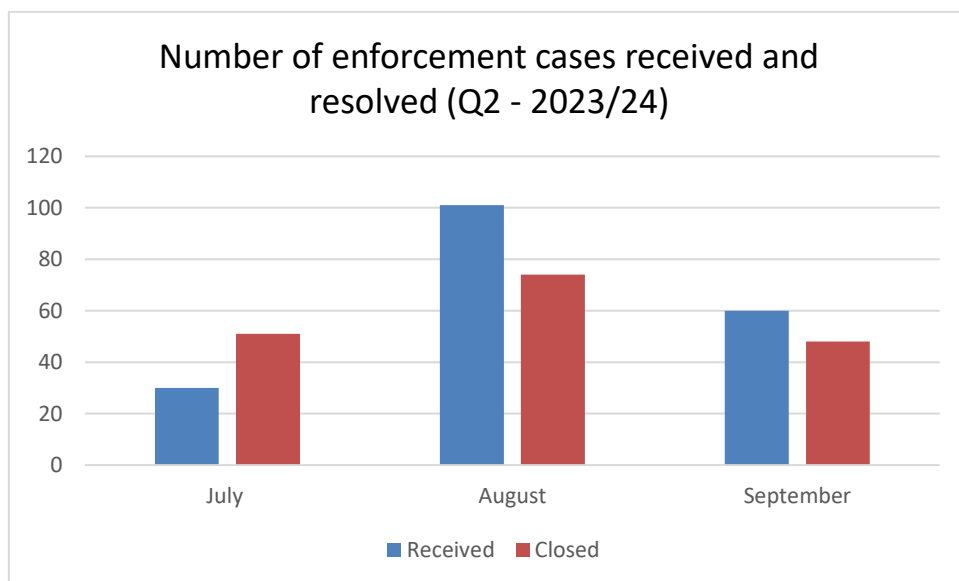


Chart 1

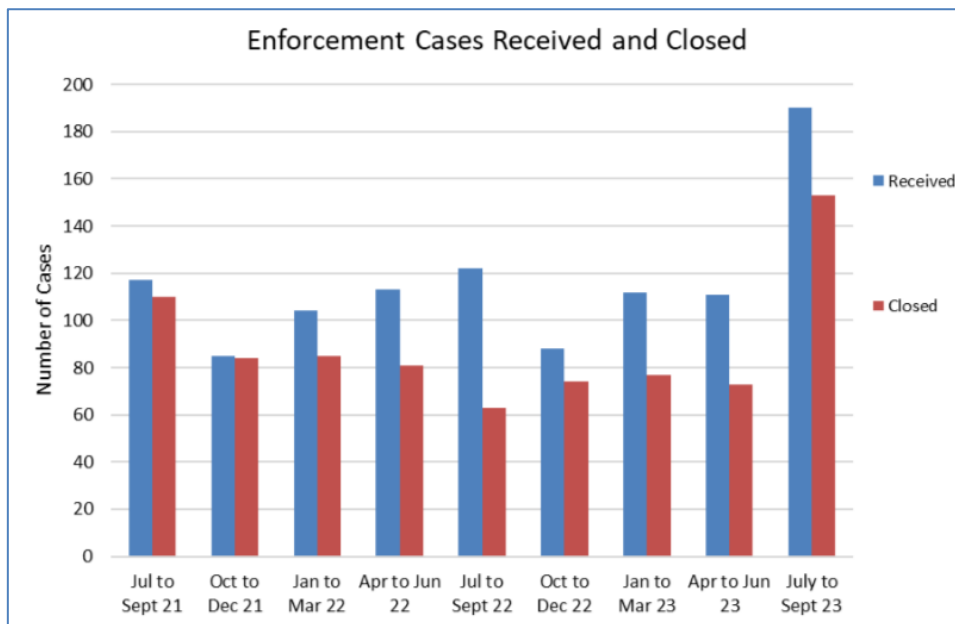


Chart 2

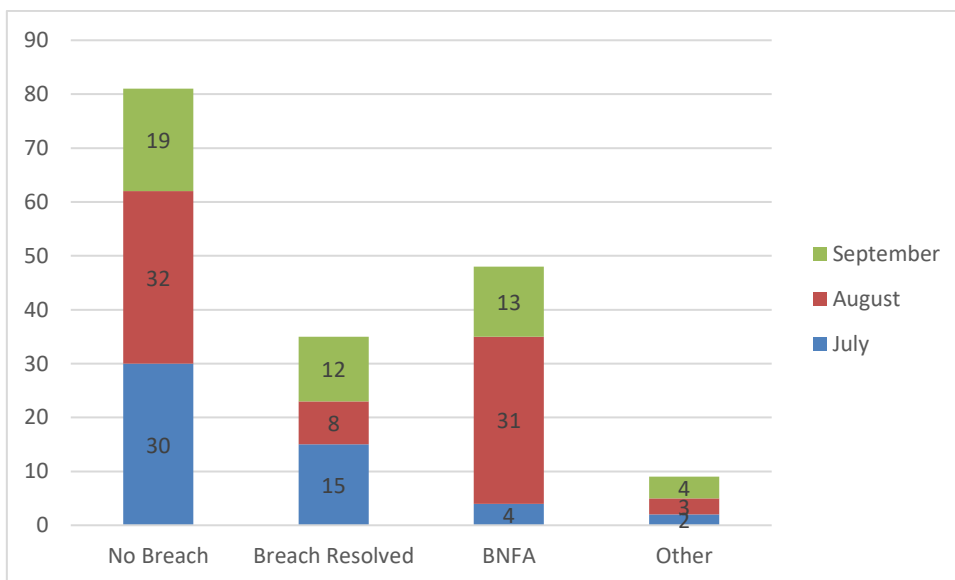


Chart 3

Breach No Further Action (BNFA)

Where an alleged breach of planning control has been received and verified, Officers are responsible for determining whether enforcement action can and should be taken.

Section 172(1) of the Town and Country Planning Act 1990 sets out that a LPA can issue an enforcement notice where:

- a) there has been a breach of planning control; and
- b) it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

In relation to Section 172(1)(b) above, expediency applies equally to decisions not to take enforcement action or to underenforce.

National Planning Policy Guidance sets out that *“Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*

- *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
- *in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.*

This approach to planning enforcement is echoed in the Newark and Sherwood District Council Planning Enforcement Plan (2020):

“Where there is a ‘technical breach of planning control’, but that breach is not considered to be causing ‘harm’, the Council may decide that further enforcement action is not expedient”.

Officers cannot compel owners or occupiers to submit retrospective applications for planning permission. In instances where unauthorised development has taken place that is not immune and not ‘trivial’, Officers undertake a comprehensive assessment of the planning merits of the development. This is often done through the service of a Planning Contravention Notice, which legally requires further details to be provided to the Local Planning Authority.

Forming the judgement that it would not be expedient to take action requires as much care and argument as deciding to take action. Expediency, along with determining that something is de minimis, is not a route to reduce the workload of enforcement officers or to avoid making difficult decisions.

Public opinion can bring pressure to take enforcement action. In particular, where a development has been granted consent following objections from local residents, it is to be expected that they will ‘police’ the development. However, officers must be mindful at all times that in such cases consideration is taken to ensure that expediency remains a planning decision in the public interest.

Notwithstanding the nature or the extent of complaints, expediency is still a matter for the Officers and if they decide to exercise discretion and take no action, our reasons for doing are explained in detail to all complainants.

Where development is considered to be acceptable – having considered the potential for negative impacts upon matters including neighbours, highway safety, heritage, and flood risk – then local and national planning policy dissuades the Local Planning Authority from taking enforcement action. These cases, which form a small number, may be closed as Breach no further Acton (BNFA).

Cases that have been closed BNFA are therefore typically a combination of the following cases:

- Where the development is immune from enforcement action due to the passage of time. For example, an unauthorised domestic outbuilding which is more than four years old will, generally, be immune under these provisions. Enforcement action cannot be taken in this scenario and the case would be closed as a BNFA.
- Where a breach that has been identified but is considered by officers, based upon policy and legislation, to be a “trivial or technical breach of planning control” where enforcement action would be disproportionate and not in the public interest. For example, an allegation identifies a fence that is 1100mm in height, where the legislation only allows for a fence to be 1000mm in height. Officers may consider that in that particular context the additional 100mm is not of sufficiently harmful impact (having considered matters such as heritage or highway safety) to warrant enforcement action to reduce the fence by 100mm, and the case may be closed BNFA.

It is important for Members to note that it is often the case that unauthorised development is found to be harmful and enforcement action is often taken. National figures published for the 2022/23 year identified that Newark and Sherwood District Council are one of the most active planning enforcement teams in England, ranking 16th overall (out of 322) and 7th outside of London authorities (Newark and Sherwood have served a significantly higher number of enforcement notices over the last recorded period (43) compared to the other Authorities within Nottinghamshire (the next highest being Broxtowe with 5). Indeed, it must also be noted that NSDC has issued almost a third of all notices issued over this period over the whole East Midlands (156) and more than double than the next Authority (Leicester, 18). These figures therefore demonstrate that Officers robustly consider cases before recommending that they are closed as a BNFA.

As previously explained, an unusually high number of Breach No Further Action cases have arisen in Q2 as many cases concerning fences that were reported to the team by a particularly aggrieved person in response to planning enforcement action against a breach taking place at their property. Many of these alleged breaches that were reported have been determined to be immune from enforcement action due to the passage of time between the development being undertaken and them being reported to the enforcement team.

Enforcement response times

Members will be aware that 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.

Members will note that despite the particularly high volume of cases that have been dealt with over the Q2 period, the enforcement team work well towards the targets set out, reaching 98.9% of the targets set within the PEP during Q2 (chart 4).

This mirrors the overall achievement of the team over the period since the PEP was adopted, where the team has met the targets of initial investigations in 97.71% of cases (chart 5).

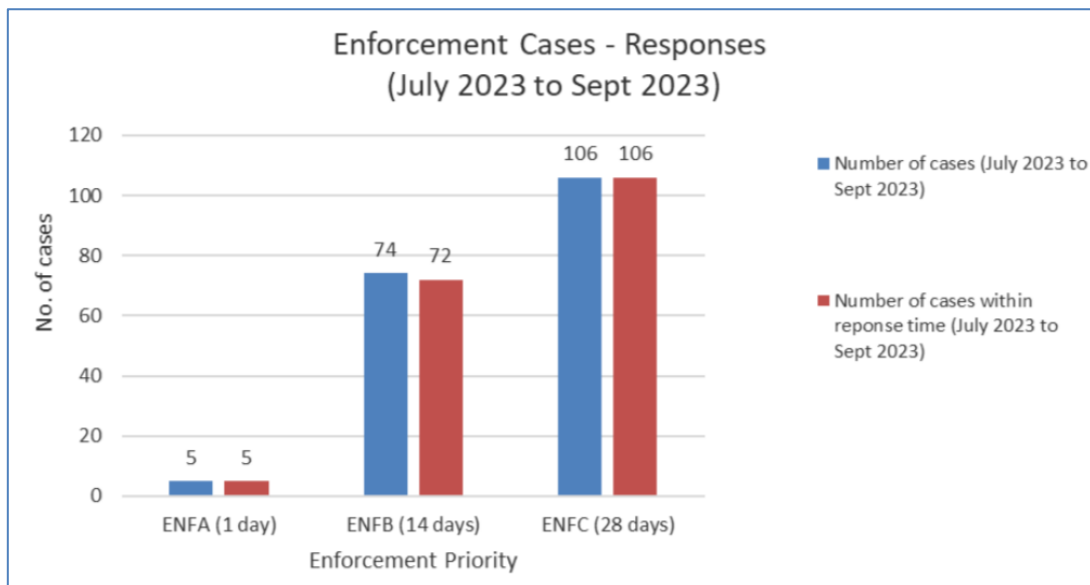


Chart 4 – PEP response times for Q2

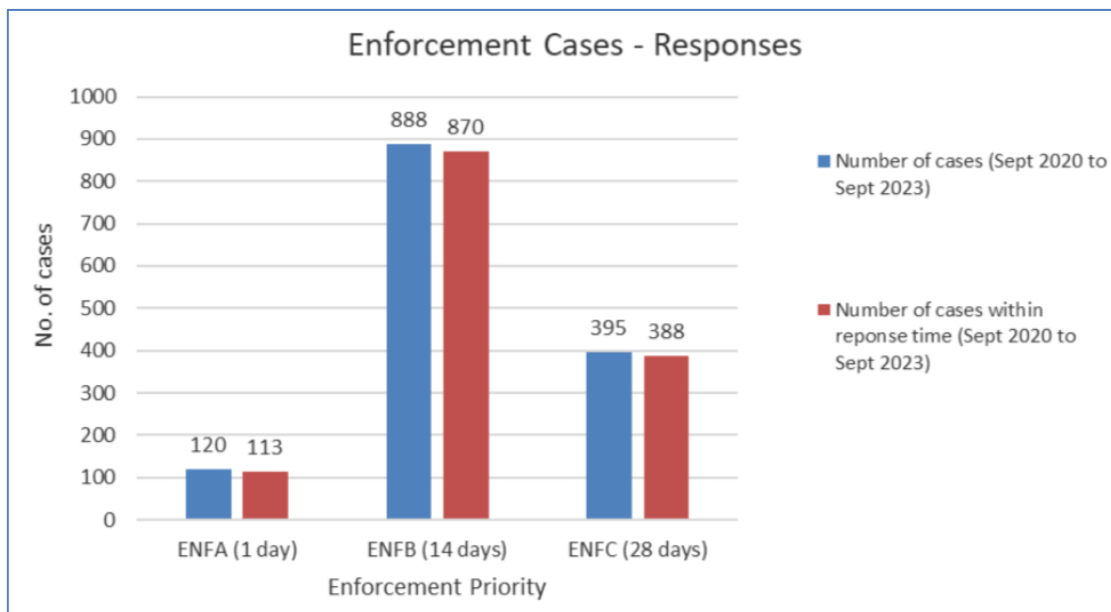


Chart 5 – PEP response times Sept 2020 – Sept 2023

Formal enforcement action

Whilst officers make every effort to resolve breaches of planning control by negotiation and discussions with those that undertake development without first receiving consent, inevitably there are occasions where a resolution cannot be found and it is deemed expedient to issue a notice.

Members will note from Chart 6 that a considerable number of notices were issued during Q6. These notices range from planning enforcement notices requiring alleged breaches to be resolved, to ‘lesser’ notices such as a PCN or S330 notice which requires information to be provided to aid an investigation.

Notwithstanding to number of notices that have been issued, Members will also note from table 1. that a considerable number of notices have been complied with – which particularly pleasing given the amount of work often entailed in securing a successful

outcome. An example of the notices that have been resolved are set out later within this report.

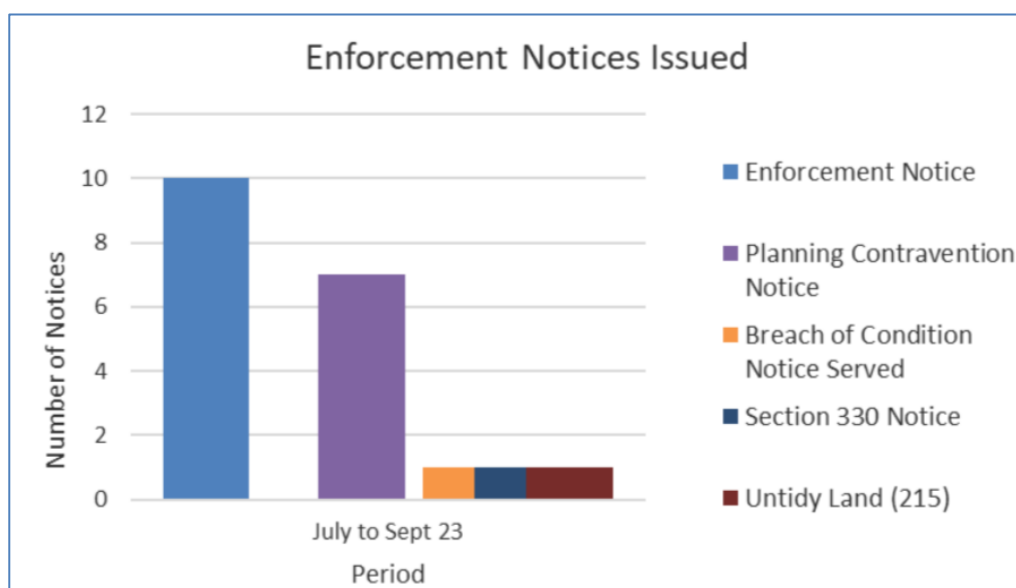


Chart 6 – notices issued during Q6

	July	August	September
Notices Issued	1	4	5
Notices Complied With	5	1	1
Appeals Lodged	1	0	1
Appeals Determined	2	0	1

Table 1 – Details of planning enforcement action (enforcement notices) and subsequent appeal results during Q2 of 2023/2024.

3.0 SCHEDULE B. FORMAL ACTION TAKEN

PROSECUTIONS

Enforcement Ref: 22/00418/ENFA

Site Address: Bilsthorpe Road, Eakring

Alleged Breach: Unauthorised Removal of Trees Within a Conservation Area

Action To Date: Prosecution September 2023

Background: Whilst considering an application for a new dwelling, Officers noted that four fruit trees had been felled and removed from the land, which is located within the Eakring Conservation Area. Such works are an offence and make the owner and person who undertook the works liable to legal action.

The trees were considered to have been sufficiently important to warrant an interview under caution and resulting legal action to be taken. The landowner was ordered to pay total costs of £1792.80, including a £1200 fine, at Nottingham Magistrates Court.

An appeal against the refusal to grant planning permission for a new dwelling on the land has been dismissed. Enforcement Officers are continuing with the enforcement investigation in relation to seeking the planting of replacement trees.

Enforcement Ref: 20/00045/ENF

Site Address: Old Hall Farm, Edingley

Alleged Breach: Untidy land adversely affecting the amenity of the District

Action To Date: Prosecution September 2023

Background: A S215 Notice (untidy land) was issued by the Council in April 2021. The defendant failed to comply with the notice within the period specified. This is an offence and therefore the Council sought to have the defendant prosecuted for the failure to comply. At the original magistrate's trial (May 2022), the defendant pleaded not guilty to the offence despite admitting to not having complied.

The matter was heard at trial on Friday 22nd September 2023 following a number of postponements. The defendant initially again pleaded not guilty to the offence, despite the substantial evidence to the contrary. However, during the course of the trial, the defendant subsequently amended their plea to guilty and was fined £445 (plus a victim surcharge of £45). They were also ordered to pay the Council costs of £3427 (the total therefore being £3922).

The case continues to be monitored to ensure compliance.

NOTICES

Enforcement Ref: 23/00088/ENFB

Site Address: Forest Side, Blyth Road, Ollerton

Alleged Breach: Alleged extension of garden into agricultural land and erection of buildings.

Action To Date: Planning enforcement notice issued.

Background: A report was received alleging that two buildings were being erected on land that was not within the formal curtilage of a residential property. Investigations found that the lawful use of the land was not residential and therefore the erection of the buildings could not be considered as being 'permitted'. A retrospective application for planning permission was submitted to retain the change of use of the land, however the application was refused due to the impact of the proposal on the surrounding land.

Consequently, the breach of planning control remains and therefore a planning enforcement notice has been issued against the use and the buildings. The enforcement notice requires the unauthorised use of the land to cease and the buildings to be removed.



Unauthorised buildings on the land.

Enforcement Ref: 22/00281/ENFB

Site Address: Great North Road, Weston

Alleged Breach: The unauthorised enlargement of a haulage yard with the associated laying of hardcore and concrete boundary fencing

Action To Date: Enforcement Notice and a Breach of Condition Notice issued in August 2023

Background: Three planning applications have been refused, relating to the development that is alleged within the Enforcement Notice, which was implemented in late 2022 despite initial refusals. The enlargement of the haulage yard, which covers an area that was conditioned to be landscaped on an earlier grant of planning permission, is considered to be inappropriate in this open countryside location. Given the refusals that have recently been issued, two corresponding Notices have been issued requiring the hardcore and fencing to be removed and the area landscaped in accordance with the earlier grant of planning permission.



Enforcement Ref: 23/00279/ENFB

Site Address: Main Street, Thorney

Alleged Breach: The unauthorised demolition of two barns and unauthorised ground works for the development of two dwellings

Action To Date: Enforcement Notice Issued

Background: Planning permission was granted for the conversion of two barns into dwellings in 2020, subject to a range of conditions requiring further information before works commenced. Officers were made aware that the barns had been demolished, other than one small section, and new foundations were beginning to be laid to build two new dwellings. This invalidated the conversion permission. An application to continue with the erection of two new dwellings was refused and a corresponding Enforcement Notice issued requiring what remains of the barn to be demolished and the foundations to be removed and infilled.



4.0 SCHEDULE C: EXAMPLES OF BREACHES RESOLVED WITHOUT FORMAL ACTION

Enforcement Ref: 23/00268/ENFC

Site Address: Field Reference Number 1459, Kelham Road, Kelham

Alleged Breach: Alleged displaying of advert without consent

Background: The Enforcement team received an allegation regarding the display of a parked trailer advert off Cattle Market roundabout. A parked trailer advert pertaining to caravans was present on site. It was identified that the advert was unlawful and would have to be removed. The owner of the business was contacted and informed that their advertisement was unlawful and would need to be removed. The advert was subsequently removed and the enforcement case closed.

	
Advert present before making owner aware	Site after advert removed

Enforcement Ref: 22/00241/ENFB

Site Address: Guylers Hill Drive, Edwinstowe

Alleged Breach: Unauthorised beauticians operating from a residential address.

Background: A complaint was received that a beauticians business operating from a residential address was leading to issues in the locality such as an increase in traffic and resulting parking concerns. A Planning Contravention Notice (PCN) was issued to ascertain further details regarding the business. The business has since relocated from the residential address to a commercial premises in the locality, resolving the vehicular issues that were occurring in the residential area.

Enforcement Ref: 22/00232/ENFB

Site Address: Middle Gate, Newark

Alleged Breach: Unauthorised Signage

Background: Card Zone occupies a grade II listed building. Signage that was considered to be inappropriate on this historic building had been installed without the requisite consent having been sought from the Local Authority. Conservation Officers engaged successfully with the occupants who engaged constructively to have an alternative scheme designed and implemented in a timely manner, resulting in the much-improved signage shown below.

This is part of an ongoing project of engagement with commercial premises in Newark town centre to improve its aesthetics whilst also protecting our heritage assets, which in turn is hoped to improve the success of the commercial aspect of the town.



Enforcement Ref: 22/00268/ENFC

Site Address: Sherwood Road, Rainworth, NG21 0LJ

Alleged Breach: Alleged Overgrown Garden: Empty Property

Background: An allegation regarding untidy land and overgrown grass on a short-term abandoned property was received. It was noted upon further investigation that the property has over-grown grass to the side and rear gardens which is adversely affecting the amenity of the area given the prominent position of the property. A site visit was conducted in August 2022 and it was evident that the house was vacant and was concurrently subject to two planning applications that were seeking to change the use from a C3 dwellinghouse to a dental practice. Both applications were dismissed at appeal. A site inspection was conducted and it was noted that the property was being renovated to bring the house back to a liveable residential condition. Given that visible, and extensive works were being undertaken to improve the condition of the property, it was considered that there would be no reason to believe that the conditions of the land wouldn't be improved as part of the works.

However, no immediate improvements were forthcoming and officers were therefore required to actively engage with the property owners/ developers to improve the

condition of the land. Subsequent inspections revealed that works had taken place and that the garden on this prominent location had been sufficiently improved.



	
<p>Condition of land when case raised</p>	<p>Condition of land following officer intervention</p>

Enforcement Ref: 23/00316/ENFC

Site Address: 12 Goldcrest Avenue, Rainworth, Mansfield, Nottinghamshire, NG21 0WS

Action To Date: Alleged Tall Fencing

Background: The Council received a complaint regarding a high fence/screen that was erected on the rear garden without planning permission. The complainant said that the fence was high and was blocking sunlight from coming into their property. A tall (approximately 3 metres from ground level) timber screen had been erected at the rear garden and did not benefit from deemed consent. The owner was made aware that the timber screen would either have to be removed entirely or be reduced to a maximum height of 2 metres from ground level. The timber screen has been reduced to a maximum height of 2 metres from ground level. Therefore, the breach was resolved, and no further action was needed.

	
<p>Fence prior to reduction (note the considerable overall height)</p>	<p>Site after timber screen was reduced to 2 metres in height from ground level</p>

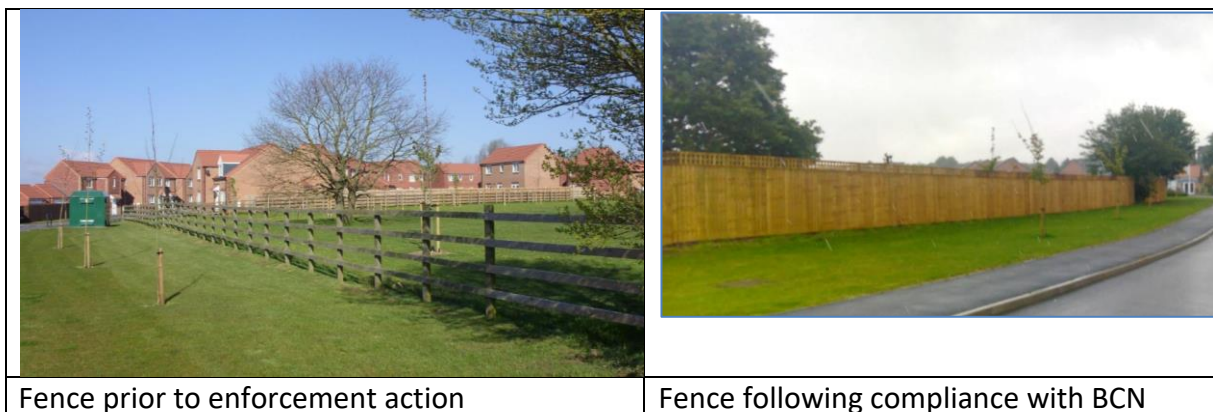
5.0 SCHEDULE D – NOTICES COMPLIED WITH DURING QUARTER

Enforcement Ref: 21/00355/ENFM

Site Address: Land Off Oldbridge Way, Bilsthorpe

Action To Date: Breach of Condition Notice issued March 2023

Background: A housing developer had not installed the 1.8m high trellised fencing around the perimeter of the play area on a new-build estate as stipulated in their approved set of plans. An application to retain a low level post and rail fencing that was instead erected was refused by the Planning Committee on account of safety and security of persons using the play area and passing road users. A Breach of Condition Notice (BCN) was issued requiring the developer to install the approved 1.8m high fencing. This has been undertaken.



Enforcement Ref: 21/00419/ENFC

Site Address: Southwell Road East, Rainworth

Action To Date: Enforcement Notice issued August 2022

Background: A complaint regarding the erection of a poor-quality canopy structure at a hand car wash premises, affecting local amenity and neighbouring properties was raised. Officers issued an Enforcement Notice requiring the removal of the canopy. The occupants did not initially comply with the Notice and legal proceedings were issued, with a hearing date set for early September 2023. Shortly before this the owner took possession of the land and a further site inspection found that the canopy has now been removed.



6.0 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.

7.0 Recommendation

That Planning Committee considers the contents of the report and identifies any issues it wishes.

Background Papers

None