

Report to Planning Committee 15 February 2024

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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 third 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 October – 31 st December 2023
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 third quarter of 2023/24 from the 1st October to the 31st December 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 Q3 in terms of numbers of cases received, response times and the reasons for cases being closed.

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 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. Schedule E gives some examples of Enforcement Appeal Decisions made by the Planning Inspectorate.

2.0 SCHEDULE A – OUTLINE OF ENFORCEMENT ACTIVITY

Chart 1 sets out the number of new enforcement cases that were received and closed during Q3. Both the number of cases received and closed were considerably higher in the 2023/24 year than the 2022/23 period (chart 2), continuing the trend of previous quarters this financial year.

Chart 3 sets out the reasons why cases have been resolved in Q3. Members will note the majority of cases have either been closed because they were not a breach of planning control or because the breach had been resolved by Officers (this could be by the breach ceasing, planning permission being granted retrospectively or a Notice being served and subsequently complied with), reflecting the considerable efforts of Officers to reach resolutions and solutions.

Chart 4 sets out the response time of Officers in relation to the targets set out in the Newark and Sherwood Planning Enforcement Plan (PEP) - (amended September 2020). Despite the ongoing demands of the service, both in terms of the numbers and complexity of cases being investigated, steps were taken to address all but one of the 94 ENFA/ENFB/ENFC complaints that were received in this quarter.

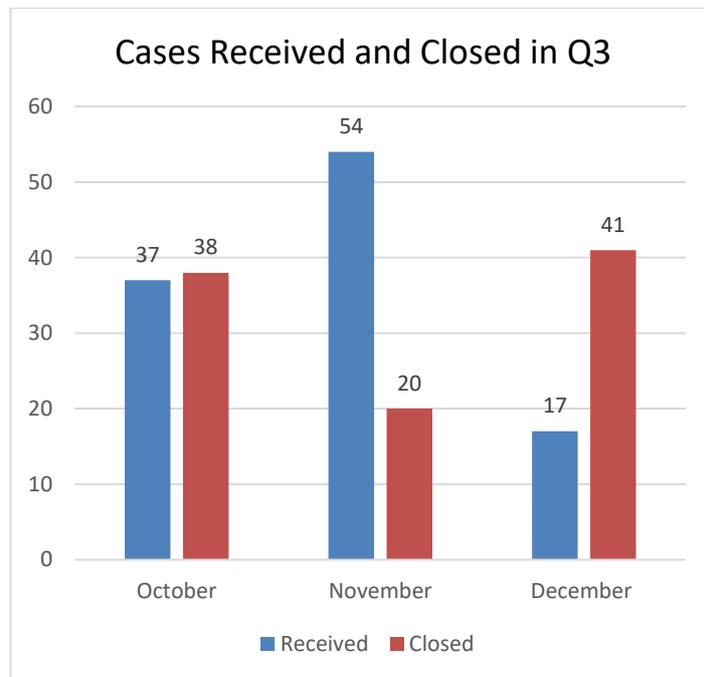


Chart 1

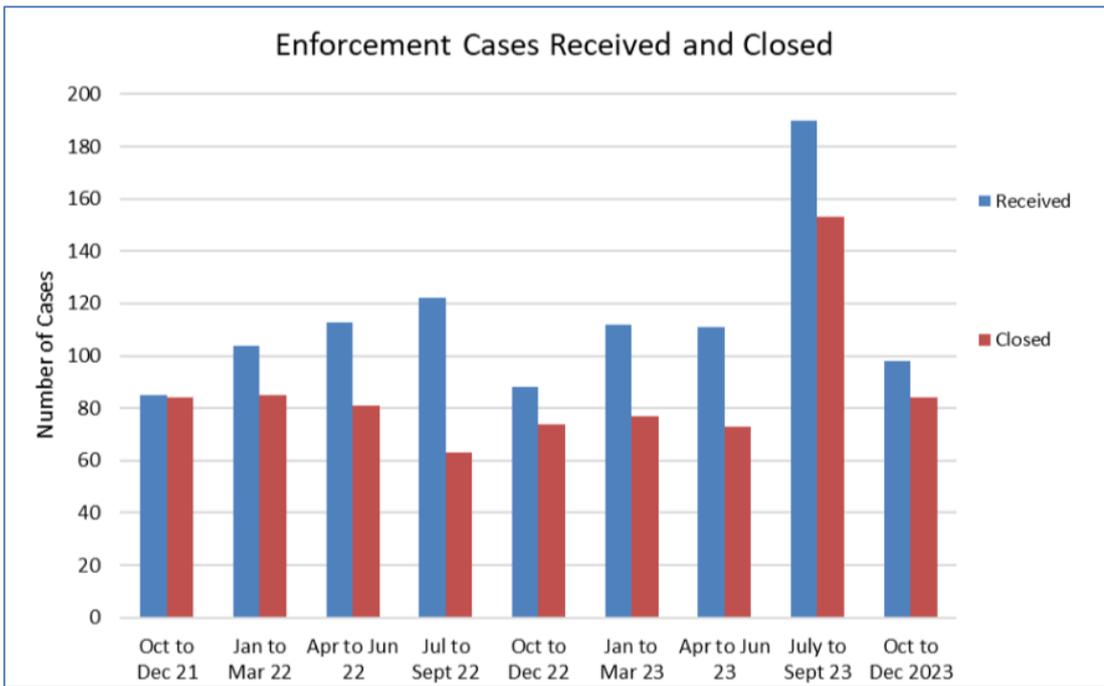


Chart 2

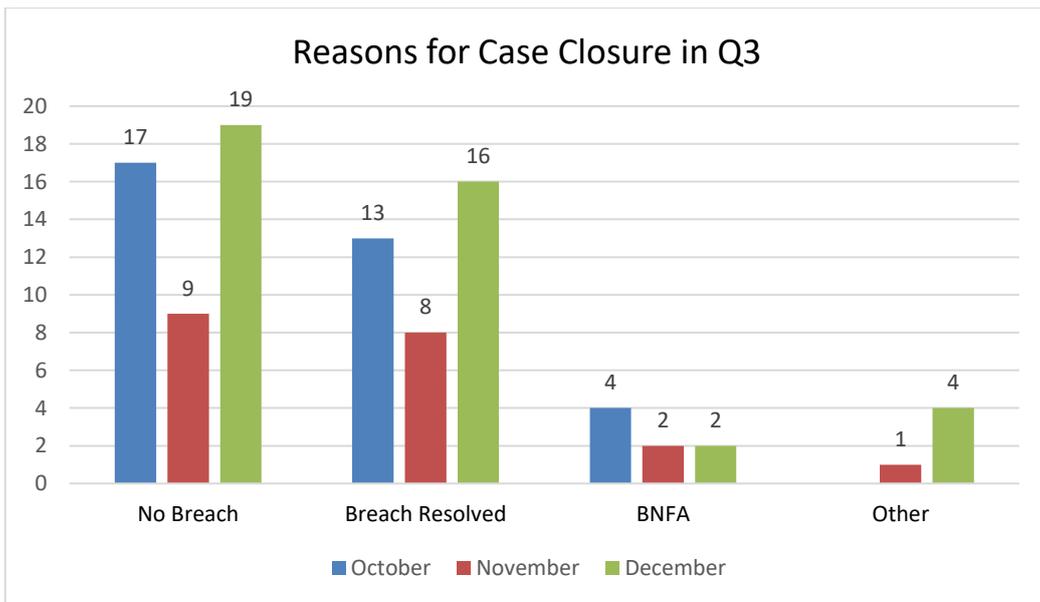


Chart 3

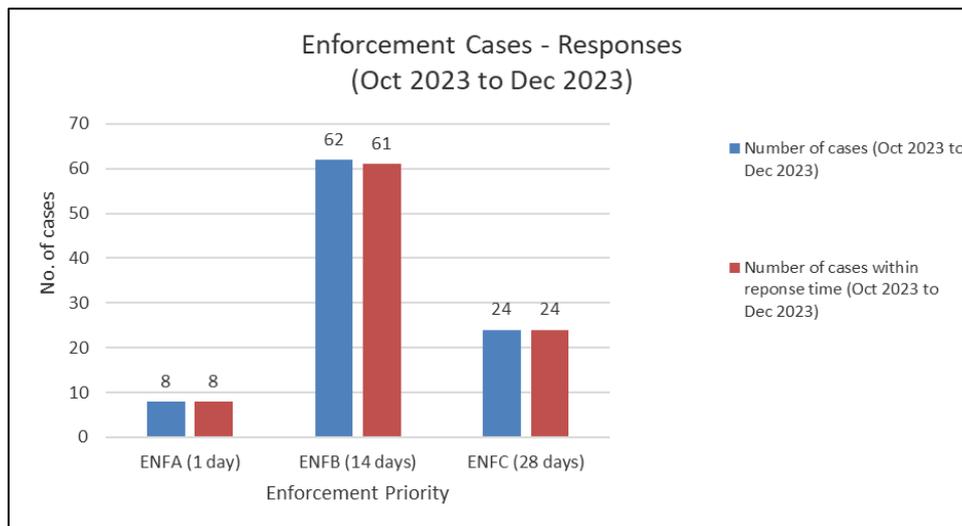


Chart 4 – PEP response times for Q3

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 (the process and considerations for which are detailed within the PEP).

Members will note from Table 1 that a considerable number of Notices were issued during Q3. 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 the 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 is particularly pleasing given the amount of time and work often entailed in securing a successful outcome. An example of the notices that have been resolved are set out later within this report.

Members will also note that the serving of a high number of Notices almost inevitably results in a high number of appeals being lodged with the Planning Inspectorate. Appeals often require a considerable Officer resource to address (both Planning Enforcement and Development Management officers).

Particularly gratifying is that during Q3, all 6 appeals that were determined were dismissed, meaning the Council's decision to issue Enforcement Notices, and the content thereof, were upheld by the Planning Inspectorate and demonstrates the robustness and professionalism of the enforcement work undertaken.

	October	November	December
Notices Issued	4	6	5
Notices Complied With	4	6	0
Appeals Lodged	4	0	6
Appeals Determined	5 <i>All dismissed</i>	0	1 <i>All dismissed</i>

Table 1 – Details of planning enforcement action (enforcement notices) and subsequent appeal results during Q3 of 2023/2024.

3.0 SCHEDULE B. FORMAL ACTION TAKEN

Enforcement Ref: 23/00442/ENFB

Site Address: Market Place, Newark on Trent

Alleged Breach: Without Listed Building Consent, the boarding up of a vacant building

Action To Date: A Listed Building Enforcement Notice has been issued, requiring the removal of the boarding.

Background: Following the closure of the business, boarding was applied to the windows of the premises in order to prevent vandalism etc. However, this action caused a considerable number of complaints given the alleged visual harm caused to the property itself, which is Grade II, and the wider market place, given the prominent location of the building and the scale of the façade that has been boarded up. Efforts to have the boarding removed voluntarily were not agreed, with the property owner citing security and insurance reasons. However, given the detrimental impact upon works it was considered expedient to issue a Listed Building Enforcement Notice. The Notice requires the removal of the boarding. This Notice has been appealed to the Planning Inspectorate.



Enforcement Ref: 23/00190/ENFB

Site Address: Mill Farm, Hoveringham

Alleged Breach: Without planning permission, the change of use of an agricultural unit for the holding of weddings, alterations to buildings and erection of a building without planning permission.

Action To Date: 4x Enforcement Notices issued

Background: This investigation relates to three main alleged breaches of planning control/issues:

1. The use of the buildings and site for the holding of weddings.
2. Physical alterations to existing buildings.
3. The alleged building of an agricultural building principally for the holding of weddings and similar events (not for agriculture).
4. Creation of a driveway and expanded access track.

Planning permission was sought (retrospectively) twice for the change of use of the site for the holding of weddings (application refs 22/02440/FULM & 23/01159/FUL). The applications were refused consent (initially delegated to officers and latterly by this committee on 19.11.2023) due to the impact of the proposed works on the Green Belt. A planning enforcement notice has therefore been issued to require the unauthorised use of the site (including buildings and land) to cease.

In order to accommodate the change of use, numerous physical works were undertaken to the buildings (agricultural buildings), including the insertion of windows and doors. These works are deemed to be unacceptable as they are unsympathetic to the character and layout of the traditional agricultural buildings. The enforcement notice that has subsequently been issued requires the unauthorised works to be undone and the land and buildings returned to their former state.

Consent was formally given under 'prior approval' for the erection of a barn (22/00142/AGR). Under the prior notification legislation there is a condition that the development must be genuinely for agricultural purposes. However, the Council has considerable evidence that the barn is in fact being used as part of the wedding use of the wider site. Accordingly, the Council does not consider that the barn does benefit from consent under the previous prior approval and therefore is unauthorised. Given the location of the site within the Green Belt it was determined that the building was unacceptable for the current use and therefore the enforcement notice that has been issued requires its full demolition.

As part of the use of the site for the holding of weddings it has been noted that the existing access drive has been expanded (width) and extended. It is not considered that this development is acceptable and therefore an enforcement notice has been issued to require the works to be removed.



'Barn' (subject of 22/00142/AGR).

4.0 SCHEDULE C: EXAMPLES OF BREACHES RESOLVED WITHOUT FORMAL ACTION

Enforcement Ref: 23/00096/ENFB

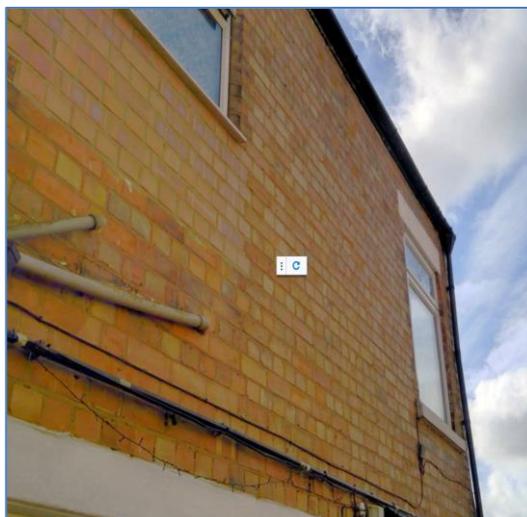
Site Address: Bowbridge Road, Newark

Alleged Breach: Unauthorised Installation of a Flue

Background: An unauthorised flue was installed on a hot-food takeaway premises. The model is said to have resulted in visual, noise and odour issues from the premises. The planning enforcement notice was issued in collaboration with action from Environmental Health colleagues, who had issued an Abatement Notice. Following the action from the Council the flue has subsequently been dismantled and removed.



Before Notice was issued.



After Notice issued.

Enforcement Ref: 23/00316/ENFB

Site Address: 12 Goldcrest Avenue, Rainworth

Alleged Breach: Unauthorised Fencing

Background: A complaint was received regarding the erection of new fencing which enclosed a rear garden and was of a considerable height. Given that fencing is typically 1.8 metres in height (and permitted development up to 2 metres in this instance), this fencing

measuring some 3 metres in height was imposing and visible from a number of surrounding properties.

The owners were made aware and promptly acted to reposition the fencing so that it conformed to permitted development legislation; rectifying the breach whilst still improving their privacy and improving the visuals considerably.



Before



After

5.0 SCHEDULE D – NOTICES COMPLIED WITH DURING QUARTER

Enforcement Ref: 21/00018/ENFB

Site Address: 6 Windsor Road, Newark on Trent

Alleged Breach: Unauthorised Dormer Window

Background: Planning permission was granted in 2020 for a large, unsympathetically clad dormer window, located on the rear roofslope on a residential property on the outskirts of Newark. The new dormer was akin to, but with notable divergences, from an approved scheme. It was considered that the bulk of the dormer would set an unsustainable precedent, and enforcement action considered appropriate. The errors in development occurred partly due to the original drawings providing inaccurate measurements of the existing roof.

The enforcement notice was appealed and dismissed, requiring the dormer to be removed and the original roof reinstated. Officers were conscious of the financial implications of doing this and have flexibly and positively worked with the owners of the property to revise the scheme and implement an alternative approval. Works to the property have now finished, rectifying the breach by a new scheme having been approved and implemented.



Before



After

Enforcement Ref: 20/00466/ENFB

Site Address: Strawberry Fields, Sutton on Trent

Action To Date: Breach of Condition Notice Issued

Background: Planning permission was granted in Sutton on Trent for the erection of 50 dwellings. That scheme required full compliance with the Flood Risk Assessment, which required a reduction in land levels in the public open space as part of the creation of a compensatory flood basin. The developer finished the site without having lowered the public open space to the requisite levels.

A revised application was submitted, off-setting the lack of sufficient compensation work by enlarging existing and other existing flood basins. The application was approved but again the required work was not implemented within the timescales required by a Condition of the latter consent.

A Breach of Condition Notice (BCN) was therefore issued requiring these works to be undertaken. The developer promptly acted following the serving of the Notice, and the flood compensation has now been fulfilled.



6.0 SCHEDULE E – APPEAL DECISIONS

Enforcement Ref: 22/00096/ENFB

Site Address: 'Chicken Shed', Kilvington

Alleged Breach: The Erection of an Unauthorised Building

Action To Date: Enforcement Notice Issued. Appeal Dismissed.

Background: Planning permission for the erection of a shed for free-ranging chickens was granted by the Local Planning Authority in 2009 (reference 09/00843/FUL). The owner of the building alleged that initial construction of the chicken shed started in late-2011. Aerial photographs indicate that the building was substantially completed around 2019.

A pre-application enquiry was submitted in 2021 which enquired about the conversion of the 'chicken shed' to a holiday let. Having begun to assess the PREAPP officers became concerned that the development as built did not benefit from planning permission under the 2009 consent for a poultry shed.

Whilst the building reflects the scale and form of the chicken shed approved under the previous consent, it did however include distinctively domestic features including substantial uPVC windows and sliding/French doors as opposed to roller shutters as shown on the approved plans. In addition, officers have also noted that the building is also fully insulated, with partially completed timber stud walls and plasterboard ceilings throughout, akin to a domestic building as opposed to one intended for agricultural purposes.

Consequently, officers considered that the building that had been erected did not benefit from planning permission as the building had not been erected as a shed for chickens.

Retrospective applications for planning permission were subsequently submitted for the retention of the building for holiday purposes (22/01168/FUL) (refused 01.09.2022) and for the use of the building (including physical alterations) for an agricultural use – mushrooms growing (22/01832/FUL) (not determined).

A planning enforcement notice (EN) was issued in January 2023. The Notice required the demolition of the building and the land to be returned to its previous condition.

Subsequently three appeals were submitted by the land owners:

- A. Appeal against a planning enforcement notice (which requires the building to be demolished).
- B. Appeal against the decision of the Council to not determine an application for planning permission (alterations to building to use for mushroom growing).
- C. Appeal against the Council to refuse planning permission for the change of use of a building.

The outcome of the appeals (December 2023) was thus:

- A. Appeal dismissed and Enforcement Notice upheld to require the building to be demolished within 6 months.
- B. Appeal allowed and 6 months given for the alteration of the building to use for mushroom growing (with a condition Requiring ongoing agric use).

C. Appeal dismissed.

Effectively this means that the requirements of the Enforcement Notice are in effect and will be required to be complied with unless the planning permission allowed by appeal B is enacted in full within 6 months (alterations to the building to make it at mushroom shed and its subsequent use for this purpose) and continues to be complied with.



Building as noted during enforcement investigation (complete with glazed windows and doors as opposed to roller shutters).

7.0 **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.

Background Papers

None