

Report to Planning Committee 9 May 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 fourth quarter of the previous financial year, and a review of the financial year as a whole.</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> <p>To provide Members with an update and legislative changes that affect planning enforcement case work.</p>
Period covered	<p>Quarter 4 - 1st January – 31st March 2024</p> <p>Financial year – 1st April 2023 - 31st March 2024</p>
Recommendation	That Planning Committee accept the contents of the report and note the ongoing work of the planning enforcement team.

1.0 Background

- 1.1 This report relates to the fourth quarter of 2023/24 from the 1st January to the 31st March 2024 providing an update on enforcement activity during this period, and a review of the financial year (1st April 2023 - 31st March 2024) performance as a whole.
- 1.2 Schedule A outlines the enforcement activity for Q4 in terms of numbers of cases received, response times and the reasons for cases being closed.
- 1.3 Schedule B includes a small number of examples of where formal planning enforcement action has been taken (such as a notice being issued).
- 1.4 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 D gives some examples of Enforcement Appeal Decisions made by the Planning Inspectorate.

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

Q4 - 2023/24

- 2.1 Chart 1 sets out the number of new enforcement cases that were received and closed during Q4. Members will note that whilst officers continue to be busy (in what has traditionally been a quiet period in terms of cases received), officers have nevertheless been successful in resolving a high number of cases during this period.
- 2.2 Chart 2 sets out the reasons why cases have been resolved in Q4. Members will note that whilst the vast majority of cases that have been closed continue to be because they were not a breach of planning control, it is notable that a significant number of cases have also been closed as the alleged breach has been resolved due to the direct work and intervention of officers.
- 2.3 Chart 3 sets out the response time of Officers in relation to the targets set out in the Newark and Sherwood Planning Enforcement Plan (PEP) - (adopted September 2020). Impressively Members will note that during this period officers were able to meet the targets for response times in 98.8% of cases during the Q4 period¹.

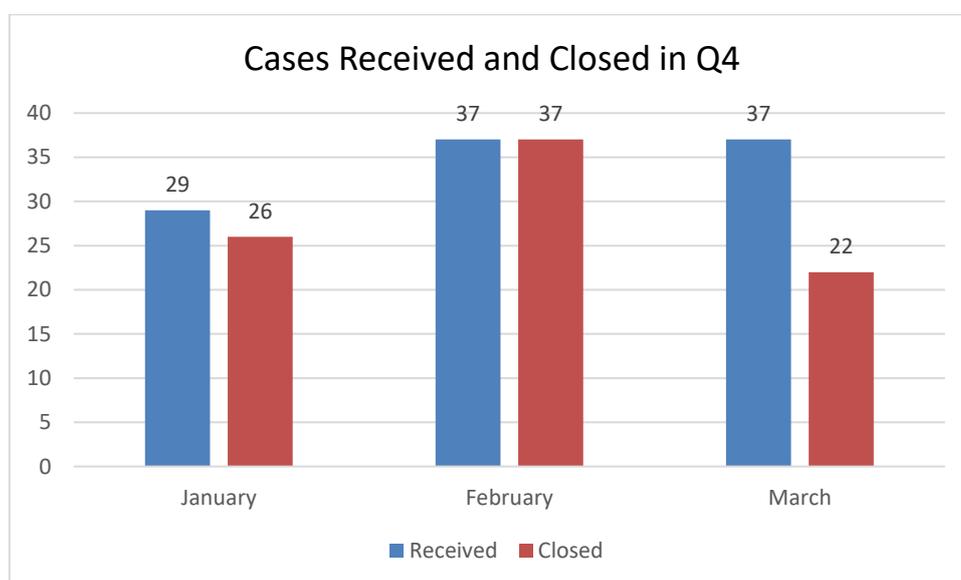


Chart 1

¹ Cases that are not category A, B or C are not subject to targets for response times (such as records of caravan site licences and ongoing site monitoring).

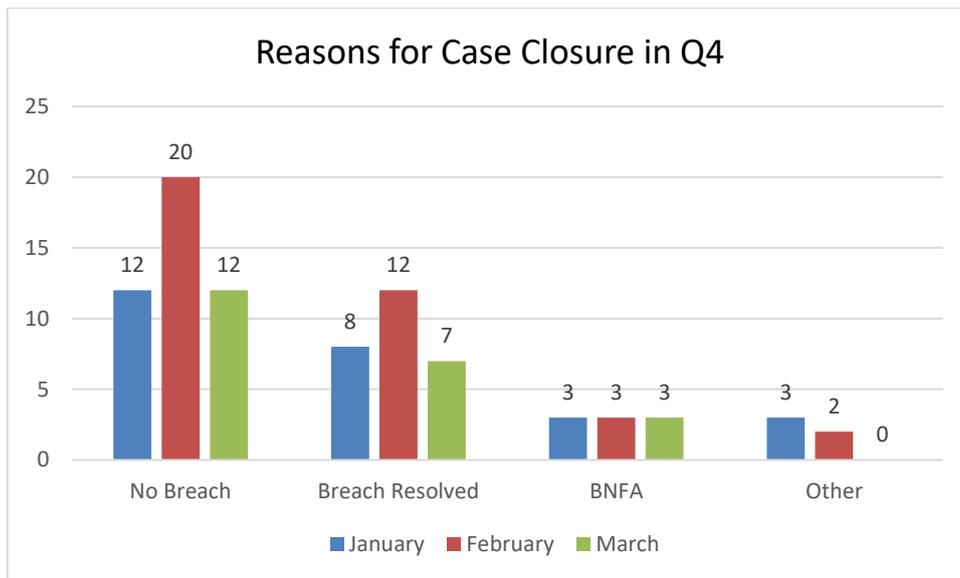


Chart 2

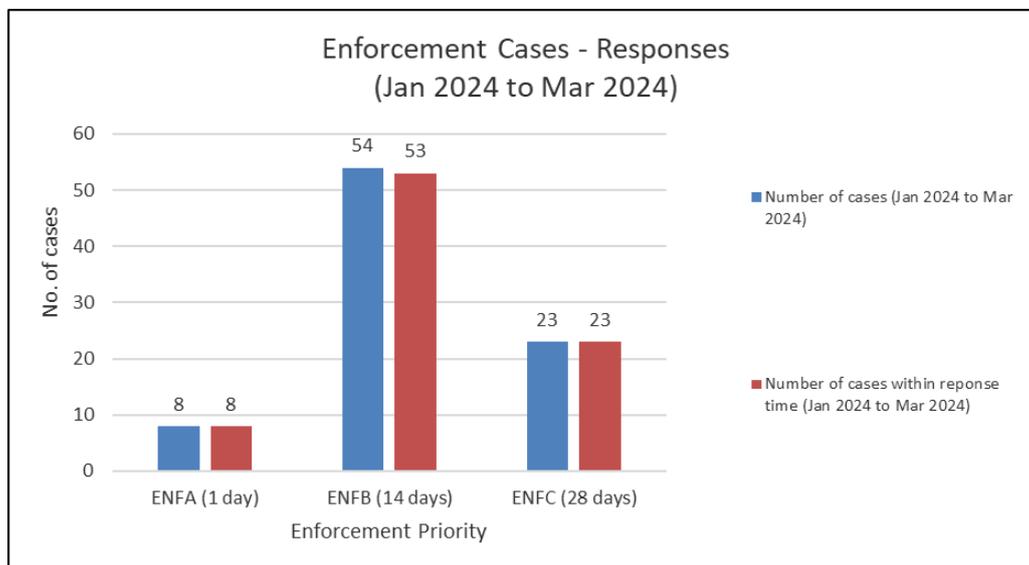


Chart 3

2.4 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). Table 1 sets out the numbers of Notices issued and appeal activity during Q4.

	January	February	March
Notices Issued	2	1	6
Notices Complied With	2	3	0
Appeals Lodged	4	1	1
Appeals Determined	2	0	0
Outcome of Appeals	Allowed – 2	N/A	N/A

Table 1 – Details of planning enforcement action (enforcement notices) and appeals during Q4 of 2023/2024.

2023/24 Figures

- 2.5 The trend of cases becoming increasingly complex and resource-demanding has continued throughout the past year, with the planning enforcement legal framework and relevant case law implications continuing to develop at a pace (see section 6). This has resulted in increasing coordination with colleagues across other departments, such as Legal, Environmental Health and Public Protection, as well as external agencies such as Nottinghamshire County Council Highways Authority, Nottinghamshire Police and the Forestry Commission.
- 2.6 The 2023/24 financial year has seen almost a 10% increase in cases received compared to the 2022/23 period, and similarly the number of cases closed this year has increased by 21%. This improved ratio in the resolution of cases is the result of ongoing training and dedication of Officers, as well as an increase in resource that has been allocated to the planning enforcement team. Enforcement Officers continue to issue a considerable number of Notices requiring remedial actions, with many of those being appealed, and some resulting in prosecutions and/or injunctions having been obtained.
- 2.7 Indeed, over the 2023 calendar year, Newark and Sherwood District Council ranked 28th out of 328 Authorities in England for the number of Notices served, with 39 (recordable²) Notices having been issued.³
- 2.8 Charts 4 and 5 detail the number of cases received and closed over the 2023/24 financial year, and the reasons why those cases were closed. Members will note that almost half of the cases received were not a breach of planning control, but nevertheless these all required the attention and resource of Officers. Over a quarter of cases closed over this period were resolved, either through negotiation with landowners (including the retrospective submission of a planning application), or by compliance with a Notice that was previously issued.
- 2.9 Members will note that a number of cases have been closed as Breach No Further Action (BNFA). These cases are those where a breach of planning control has been identified,

² Notices such as Planning Contravention Notices (PCN's) and Section 330 (S330) Notices are not nationally recorded.

³ * Includes Enforcement Notices, Breach of Condition Notices, Temporary Stop Notices and Stop Notices

however it has been decided that it would not be expedient for the Council to take formal planning enforcement action. This is usually because Officers consider that the development is acceptable on its planning merits and would therefore have received permission if an application had been submitted. In these cases, Officers will normally have pursued a retrospective application planning application before closing the enforcement case. It should be noted that new powers (enforcement warning notices – see paragraph 6.6) are now in place. The warning notice enables the Council to further pursue the submission of a retrospective application in instances of development having been undertaken without prior permission, and officers considering that it is likely that permission would be forthcoming should an application be submitted.

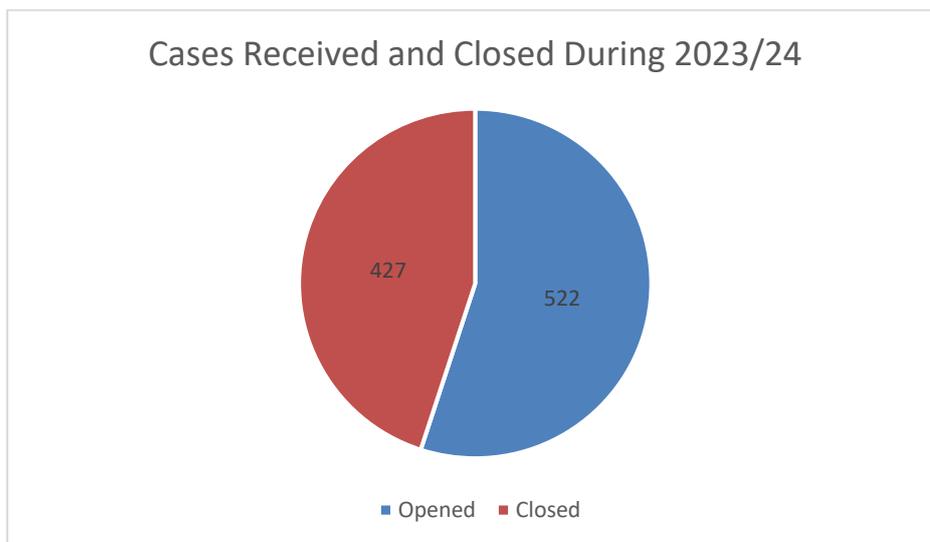


Chart 4

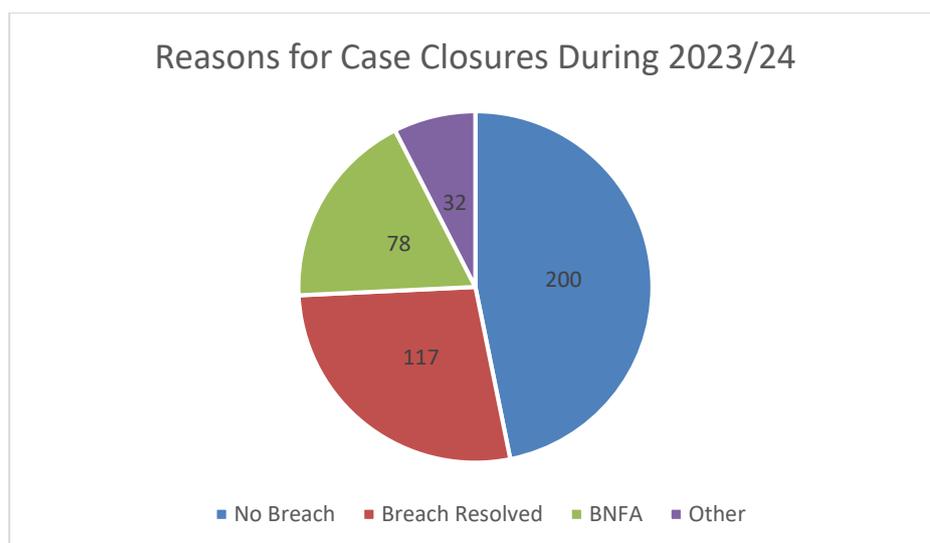


Chart 5

2.10 Chart 6 sets out the number of Notices issued throughout the year. The below data only includes those Notices which requires remedial steps or an activity to cease, due to the harm identified in each case. This data does not include Notices such as a Planning Contravention Notice or Section 330 Notice, which are requests for information.

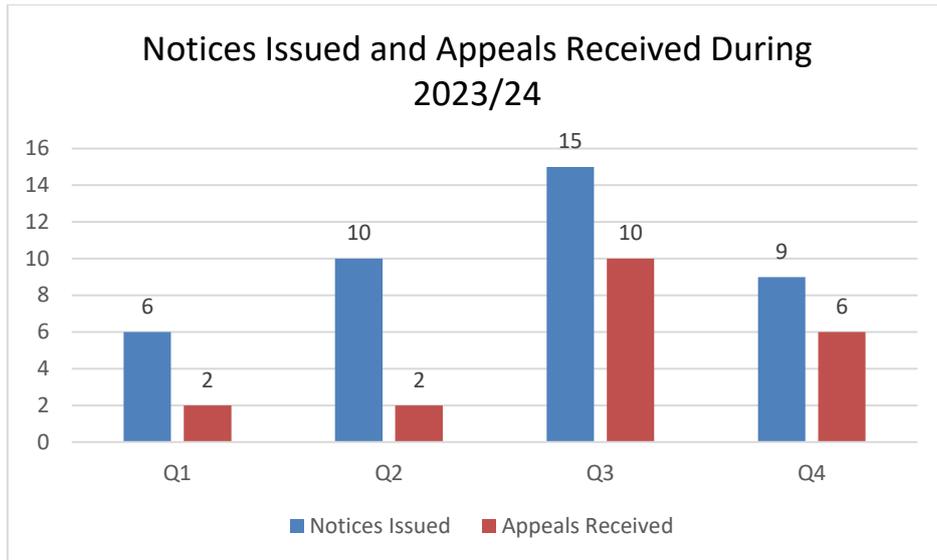


Chart 6

3.0 **SCHEDULE B. EXAMPLES OF FORMAL ACTION TAKEN**

Enforcement Ref: 23/00221/ENFB

Site Address: North Muskham

Alleged Breach: Unauthorised Alterations to Land Levels and Boundary Treatments

Action To Date: Enforcement Notice Issued

- 3.1 **Background:** Officers were notified that a previously sloping grass verge had been levelled and replaced with a considerable length of gabion baskets, a brick wall and timber sleepers, to form a new boundary to a property in North Muskham. A retrospective application was submitted but refused on a number of grounds, including that a considerable length of the new boundary had been installed on adopted highway, following consultations with Nottinghamshire County Council as the Highways Authority.
- 3.2 The Enforcement Notice requires the removal of the new development and the reinstatement of the land to its former sloped, grassed condition. The Enforcement Notice has been appealed to the Planning Inspectorate.



Site prior to development taking place.



Site showing the development.

Enforcement Ref: 22/00198/ENFC

Site Address: Highfield Road, Clipstone

Alleged Breach: Unauthorised Side Extension

Action To Date: Enforcement Notice Issued

- 3.3 **Background:** Officers received a complaint that an unauthorised side extension had been erected, affixed to an existing brick-built side extension. Officer efforts to negotiate amendments to the extension have not been taken up by the occupant, and as the current development is considered to be unacceptable, an Enforcement Notice has been issued, requiring the demolition of the side extension.



Site photo showing the unauthorised development.

4.0 **SCHEDULE C: EXAMPLES OF BREACHES RESOLVED WITHOUT FORMAL ACTION**

Enforcement Ref: 23/00510/ENFB

Site Address: Stafford Avenue, Newark

Alleged Breach: Unauthorised Car Port

- 4.1 **Background:** A large, detached car port was erected on land forward of the principal elevation of a residential property on Stafford Avenue, Newark. All such structures require planning permission. The owners promptly and cooperatively removed the structure without the need for formal enforcement action.



Site photo showing development.



Site photo showing the site following the removal of the unauthorised development.

Enforcement Ref: 24/00018/ENFB

Site Address: Victoria Street, Newark

Alleged Breach: Insertion of Incorrect Window Design

- 4.2 **Background:** As part of a wider redevelopment scheme of historic buildings in Newark, an incorrect window design had been inserted into an elevation directly overlooking neighbouring residential gardens. The approved planning permission detailed windows to be of an appropriate design to both reflect the historic value of the buildings, and most importantly protect the privacy of the surrounding neighbours. A condition was imposed on the grant of planning permission that expressly required the three windows to be inward opening and obscure glazed, to ensure privacy was retained.

- 4.3 The windows that were installed (incorrectly) were not acceptable, both from a conservation perspective and also due to the effect on the amenity of neighbouring residents. Following discussions between the developer and enforcement officer, amendments were promptly made to the windows which mirrored the approved design, including the installation of obscure glazing.



Site photo of (incorrect) windows originally installed.



Site photo showing the replacement windows.

5.0 **SCHEDULE D – NOTICES COMPLIED WITH DURING QUARTER**

Enforcement Ref: 22/00180/ENFA

Site Address: South Clifton

Alleged Breach: Unauthorised Pergola and Fencing

- 5.1 **Background:** Three timber pergolas and tall trellis fencing had been affixed to a Grade II listed residential barn conversion and boundary wall. Conservation Officers did not consider the development to be acceptable and resulted in a Listed Building Enforcement

Notice being issued. The Notice required the pergolas to be removed and the damage to the buildings repaired.

5.2 The notice was subsequently appealed but was unsuccessful, with the Planning Inspectorate supporting the position of the Local Planning Authority.

5.3 The unauthorised development has been removed within the required timescales.



Site photos of unauthorised developments.



Multiple gazebos and timber structures.



Site photos showing pergolas etc. removed.

6.0 **Legislation and Practice updates**

6.1 On 2nd April 2024, secondary legislation by way of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 were made. These Regulations bring the majority of the planning enforcement provisions provided by LURA (Levelling-up and Regeneration Act 2023) into force. Many changes have been made under LURA, including the following planning enforcement changes which came into effect on 25th April 2024.

- 2nd April [The Planning Act 2008 \(Commencement No. 8\) and Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024](#) Statutory Instrument 2024 No. 452 (C.28)
- 2nd April [The Levelling-up and Regeneration Act 2023 \(Consequential Amendments\) \(No. 2\) \(England\) Regulations 2024](#) Statutory Instrument 2024 No. 453
- 18th March [The Levelling-up and Regeneration Act 2023 \(Commencement No. 3 and Transitional and Savings Provision\) Regulations 2024](#) Statutory Instrument 2024 No. 389 (C.21)

Time limits for enforcement

- 6.2 Section 115 changes the time limits for taking enforcement action in England by revoking the four-year time limit which applied to operational development and change of use of any building to use as a single dwellinghouse. The time limit for taking enforcement against all breaches of planning control in England will now be **ten years**.
- 6.3 The transitional provisions are key to note in that this change will not apply in the following circumstances:
- a) Where the operational development was substantially completed before 25th April 2024.
 - b) Where the change of use to a dwelling occurred before 25th April 2024. i.e. the above two circumstances would remain subject to the four-year rule.

Duration of temporary stop notice (TSN's)

- 6.4 Section 116 changes the duration of temporary stop notices in England from 28 days to 56 days.
- 6.5 This change will not impact any temporary stop notice that has been issued, and not withdrawn before 25th April 2024.

Enforcement warning notices

- 6.6 Section 117 provides local planning authorities (“LPA”) with the power, in England, to issue an enforcement warning notice where it appears to them that there has been a breach of planning control, and there is a reasonable prospect that, if a planning application is made for the development concerned, then planning permission would be granted. The LPA can take further enforcement action if an application is not received within the specified period.

Restriction on appeals against enforcement notices

- 6.7 Section 118 reduces the circumstances in which an appeal against an enforcement notice can be made where an application has already been made to regularise the breach. In short, it effectively removes the ground (a) so that there is only one opportunity to obtain retrospective planning permission.
- 6.8 This change does not apply to appeals against enforcement notices that were made and have not been withdrawn before 25th April 2024.

Undue delays in appeals

- 6.9 Section 119 provides the Planning Inspectorate (in England) with the ability to dismiss appeals against enforcement notices and appeals relating to certificate of lawfulness where the appellant is responsible for undue delay in the progress of the appeal.
- 6.10 This change does not apply to enforcement notice or certificate of lawfulness appeals that were made before 25th April 2024.

Penalties for non-compliance

- 6.11 Section 120 increases the penalties that relate to several planning enforcement offences.
- 6.12 On 25th April 2024, the fines payable for non-compliance with a breach of condition notice or for non-compliance with a section 215 notice were increased. The fine for breaching a section 215 notice will be one-tenth of the greater of (i) £5,000 or (ii) level 4 on the standard scale of fines.
- 6.13 There will be no limit on the fine that can be imposed for disregarding a breach of condition notice. The current maximum fine is £2,500 for breach of condition notices in England.
- 6.14 This change applies to offences committed after 25th April 2024.

Heritage Enforcement Changes

- 6.15 A further enforcement power which relates to listed buildings are also effective from 25th April 2024.

Temporary Stop Notices (TSN's)

- 6.16 Section 103 of LURA amends the Planning (Listed Buildings and Conservations Areas) Act 1990 ("LBA 1990") by giving LPAs the power to issue temporary stop notices in relation to listed buildings where they suspect that unauthorised works have been carried out.
- 6.17 The temporary stop notice can require that works stop for up to 56 days to allow the LPA to investigate the suspected breach. Section 103 also creates an offence for contravention of a temporary stop notice.

Building Preservation Notices

- 6.18 Another heritage enforcement change is contained in Section 105 of LURA which amends the LBA 1990 so that LPAs are required to consult with the Historic Buildings and Monuments Commission before serving a building preservation notice. Section 105 also amends the LBA to remove the right to claim compensation for building preservation notices.
- 6.19 Section 105 came into force on 25th July 2024, but does not apply to building preservation notices that come into effect before 25th July 2024.

7.0 Implications

- 7.1 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