

**ENFORCEMENT ACTIVITY UPDATE REPORT**

This report follows on from the report that was presented to Members on 5 December 2017 which highlighted planning enforcement performance and cases of note during the final quarter until 22 November 2017. This report extends on from this until the end of the quarter; to 31 December 2017 thus giving a complete picture for the quarter.

Moving forward it is intended that a report will be brought before you on a quarterly basis for you to note performance and to update you on cases where formal action has been taken. However it will also include case studies which show how the breaches of planning control have been resolved through negotiation. The first of these comprehensive quarterly reports will be brought before you at the first available Committee where progress can be reported for the period of January to March 2018 (n.b. this is likely to be in May 2018 due to the early committee date in April and lead in times for reports).

This report presents a snap shot on the general volumes of cases received and dealt with.

- Schedule A outlines the enforcement activity during the quarter (October to December 2017).
- Schedule B (separate attachment) sets this (on a pro-rata basis) against the activity over previous quarters). Please note that cases closed exceed, on occasion, cases received as a case received in an earlier quarter may have been closed.
- Schedule C details a summary of formal action taken since the last report was compiled which in this case is for the period of 22 November to 31 December 2017.
- Schedule D provides a selection of cases where breaches have been resolved without formal action having been taken.

**SCHEDULE A**

<b>SCHEDULE A: ENFORCEMENT CASES</b>	1 to 31 October 2017	1 to 30 November 2017	1 to 31 December 2017
Cases Received	42	49	15
Case Closed*	55	21	4
Notice Issued	0	4	3 (one re-issue)
Notice Complied With		0	0
Appeal Lodged	0	0	1
Prosecutions	0	2	1

It should be noted that 'case closed' can include a number of outcomes, which are generally breach resolved (through planning application or removal), no breach identified (not development or permitted development), or that a breach exists but it is not expedient to pursue. Please note that 'Notice' for the purposes of these statistics does not include Planning Contravention Notices issued.

A separate report will be brought to Members in due course to capture the overall split but in general terms approximately 60% of all cases investigated are not a breach of planning control.

## SCHEDULE C. FORMAL ACTION TAKEN (22<sup>nd</sup> November 2017 to date)

Schedule C provides a more detailed position statement on formal action (such as enforcement notices served) since the report performance report was brought before Members. This table does not detail Planning Contravention Notices served.

It is worthwhile pointing out that where we refuse a retrospective application the Council would ordinarily issue a formal Notice to those with an interest in the land as this then limits the time for appeal to 28 days rather than the usual 6 months and avoids the applicant from having two opportunities of appeal which ultimately would cost the Council money to defend.

<b>Enforcement Ref:</b>	<b>17/00130/ENF</b>
<b>Site Address:</b>	<b>The Red Lion (former) Public House High Street South Clifton Newark, Nottinghamshire</b>
<b>Alleged Breach</b>	<b>Breach of conditions 2 and 10 of planning permission 16/01052/FUL (relating to height of boundary wall)</b>
<b>Date received</b>	<b>06.05.2017</b>
<b>ACTION TO DATE:</b>	<b>Service of Enforcement Notice 27/11/2017</b>
<u>Background</u>	
<p>Members may recall that a planning application was considered at 1 November 2017 Planning Committee for the '<i>Material <u>change of use of public house to dwelling, removal of prefabricated garage and single storey extensions. Construction of first floor extension and new detached double garage. Form new garden from land formerly part of the Old Farm House.</u></i>' Members approved the application (in line with the officer recommendations) subject to a number of conditions. Of note is Condition 2 (the plan condition) which for the avoidance of doubt defined the permission and Condition 10 which was specifically imposed by Members which 'conditioned out' the raising of the boundary wall with High Street and Back Lane.</p>	
<p>The applicant then applied (under planning reference 17/01129/FUL) to vary Condition 10 of the permission to allow the boundary wall to be raised. At some point the wall was raised prior to the determination of the application by Planning Committee on 3<sup>rd</sup> October 2017. The application was refused by Members (in line with officer recommendation) on the grounds that the raising of the wall restricted visibility from the site access to the detriment of highway safety. An appeal against this refusal has been lodged. However this appeal, even if successful will not achieve what the applicant wants (which is ultimately the retention of the entire length of wall at the height as now exists) as it relates to only part of a wall some c7.6m in extent rather than the entire wall.</p>	
<p>Ongoing discussions have taken place, however since the wall was raised, the then applicant has sold on the property. Further negotiations have taken place with the new owners with a view to resolving the breach. However this has culminated in the service of the Breach of Condition Enforcement Notice.</p>	

A Breach of Condition Notice was served on 27.11.2017 upon the previous owner who undertook the works as well as the new owners. There is no right of appeal against the issue of such a Notice. However a long compliance period (until the end of May 2018) has been given to allow the owners to engage the services of a reputable builder to undertake the works.

The Notice requires the reduction in the height of the wall to no more than 1 metre where it bounds High Street (required to be no higher given highway visibility splays) and 1.3m where it abuts Back Lane as was it was previously.

**Enforcement Ref:** 16/00323/ENF

**Site Address:** Home Farm  
29 Main Street  
Upton  
Newark

**Alleged Breach** Poor condition of listed building

**Date received** 18.10.2016

**ACTION TO DATE:** Successful prosecution on 30/11/2017 for Non-Compliance with Section 215 Notice

#### Background

Complaints were received regarding the poor state of a Grade II listed building and its grounds. Investigations established that the complaint was justified and that the appearance of the site was harmful to the amenity of the area. Officers had some difficulties in accessing the site which resulted in a warrant being issued to enter the premises. Further difficulties were encountered due establishing ownership of the land.

Correspondence to the owner was ignored and this resulted in the service of a Section 215 Notice on 16 May 2017 which required;

- Removal of the overgrowth (brambles, nettles vegetation) growing to the western side of the house and from within the courtyard;
- Removal of the vegetation growth from the exterior of the building
- Clean, repair and repaint the exterior joinery and board out openings with no windows;
- Replace broken or missing window panes,
- Clear eaves guttering and rainwater goods etc.
- Refix loose pantiles.

The Notice took effect on 14 June 2017 with a time period for compliance given as two months, so by 14 August 2017. No works took place.

Court proceedings against non-compliance with the Notice have since taken place in Mansfield Magistrates Court on 30 November 2017. However the owner failed to attend the hearing (despite the owner apparently telephoning the court to say he was on his way some 15 minutes after it was listed to be heard) and the magistrate took the decision to hear the evidence in his absence. The owner was found guilty and was fined £440, a victim surcharge of £44 and costs in full of £753 to be payable within 28 days.

In terms of further action, Mr Smith will be guilty of a continuing offence, which is up to £100 per day for each day he fails to comply with the notice. Direct action is another option that will be considered should the need arise.

**Enforcement Ref:** 12/00400/ENF

**Site Address:** Land off Moor Lane  
South Clifton  
Nottinghamshire

**Alleged Breach** 1) Siting of residential caravan, 2) erection of a metal framed building and 3) operating business

**Date received** 18.10.2016

**ACTION TO DATE:** Committal Proceedings in Court 6<sup>th</sup> December 2017 - Adjourned due to substantive breaches resolved

#### Background

This is a long standing enforcement case whereby formal action had already been taken. An Enforcement Notice was served in June 2011 requiring the removal of a static caravan and the cessation of the unauthorised residential use by 21 September 2012. An appeal was lodged and dismissed in May 2012.

However further breaches of planning control took place and on 3 September 2012 two further Enforcement Notices were served requiring the removal of a green metal framed building and the cessation of the use of the land for business purposes.

In August 2014 given the enforcement notices had not been complied with the perpetrators were taken to court where a not guilty plea was entered. A trial was then set for 23 January 2015 (having been put back from 2014 given their ill health) but was withdrawn on legal advice given that a defence was entered that the person being prosecuted did not own the site and there were bankruptcy issues which meant even a successful prosecution would not cover the legal costs nor resolve the breach.

Having explored every other tool available in order to resolve the breach it was concluded in 2015 that the only way in which the breach could be resolved was via injunctive and direct action having got support from Members of the Planning Committee in July 2015.

Following the resolution of Members, the courts eventually granted the Council an injunction on the land on **12 December 2016**. The injunction required compliance with the Enforcement Notices and to return the land to its lawful agricultural state.

Further site inspections were carried out in March, April and September 2017 which concluded that the Injunction had not been complied with.

Consequently a committal hearing took place on **6 December 2017**. The case progressed on the basis that whilst the residential occupation of the site had ceased (albeit after it should have done according to the injunction) the site was still occupied by significant materials, lorry bodies, and general commercial paraphernalia. Within the court, and prior to the formal committal hearing taking place, the defence provided photographs of the site which appeared to show that the site had been largely cleared, save for some timber stables and the steel framed building, which was reported to be solely used to store agricultural equipment. On this basis that it appeared that the breaches of planning control appeared to have been largely resolved the Council requested that the court adjourn the matter until the New Year. A site visit was undertaken immediately afterwards which confirmed that much of the breach had been resolved including the residential use and the caravan removed albeit some buildings remain on site.

Whilst the Injunction Order served has not been fully complied with, the Authority is required to consider expediency. Upon inspecting the site on the same day, the 2 substantive structures which remain on the site are stables and the metal framed building. There was also a loaded lorry trailer, a shed, a green steel container and some fencing. Officers consider that the site is now largely acceptable in planning terms (i.e. not unusual for a site in the open countryside) and with agreement from the Deputy Chief Executive it was concluded that the breach of planning permission was largely resolved to an acceptable level such that no further formal action is considered expedient, proportionate or necessary. The case is now closed with no further action albeit the owner of the site has been written to explicitly require that the Injunction Order which remains on the land is complied with (with the exception of the removal of the metal framed building which officers accept could remain subject to being lowered in height and solely used for agricultural purposes).

**Enforcement Ref: 17/00406/ENF**

**Site Address: 2 Adams Row  
Southwell  
Nottinghamshire**

**Alleged Breach Non-compliance with conditions 2 and 4 of permission 16/00024/FUL**

**Date received 13.11.2017**

**ACTION TO DATE: Service of Enforcement Notice on 28/11/2017**

Background

Planning permission was granted under delegated powers on 2<sup>nd</sup> March 2016 (planning reference 16/00024/FUL) for the erection of a rear lean-to kitchen extension and front extension over the existing garage of the above dwelling.

Four conditions were attached as follows; 1) required the development be commenced within 3 years; 2) required compliance with the approved plans; 3) required the development be carried out with the approved materials; and 4) required all windows in the western elevation to be obscure glazed (level 3 or higher on the Pilkington scale of privacy) and non-opening up to a height of 1.7m above internal floor level prior to first occupation and thereafter be retained

as such.

It was brought to our attention that the 3 windows at first floor within the extension (serving a bathroom, study and en-suite) had not been fitted with obscure glazing. In considering the planning application the case officer noted:

*“With regards overlooking; a non-obscure glazed window was visible during the site visit within the eastern elevation of the neighbouring dwelling which is understood to serve a landing. It is proposed that 3 windows be constructed at first floor level in the western elevation of the extension to serve a bathroom, study and ensuite. It would be expected that in the interests of amenity that the bathroom and ensuite be obscure glazed, however in the interests of privacy I am also recommending that the window in the study be obscure glazed and non-opening up to a minimum height of 1.7m, which shall be controlled by way of condition. Subject to the imposition of such a condition I am confident that the proposed first floor element above the garage would not significantly detract from the amenity of the neighbouring property to warrant refusal.”*

It was therefore clear that obscurity of the window is essential to the acceptability of the overall scheme and it was therefore deemed to be expedient to take action. As such an Enforcement Notice was issued upon the owners of the property on 27<sup>th</sup> November 2017 which requires that all windows at first floor level on the west elevation of the extension are fitted with obscure glazing for the full height of the window and to ensure they are non-opening up to a minimum height of 1.7m from internal floor level. The Notice takes effect on 25<sup>th</sup> December 2017 with compliance required 56 days later; c24th February 2017.

**Enforcement Ref:** 17/00400/ENF

**Site Address:** Trent Farmhouse  
Norwell Woodhouse  
Nottinghamshire

**Alleged Breach** Unauthorised material change of use of land

**Date received** 10.11.2017

**ACTION TO DATE:** Service of Enforcement Notice 8/12/2017

#### Background

Members will recall a committee site visit on 5 December 2017 in connection with the consideration of a householder application (17/01888/FUL) for a two storey extension at the above property which you resolved to refuse. During the site visit it was noted that a paddock/agricultural land to the north and north-east of Trent Farmhouse was being used for domestic purposes with the applicant having apparently extended their garden curtilage without the necessary planning permission. This was considered to be a harmful and unsustainable encroachment into the open countryside and contrary to the Development Plan. Members resolved that the matter be taken forward with the issue of an Enforcement Notice.

Consequently on 8 December 2017 an Enforcement Notice was served upon the owners of the land which requires the cessation of the use of the land for domestic purposes and the removal

of all of the domestic paraphernalia including play equipment. The Notice comes into effect on 18 January 2017 with compliance required by 18 April 2017.

**Enforcement Ref: 17/00370/ENF**

**Site Address: Blu Burger UK Ltd  
14 Castle Gate  
Newark, NG24 1BG**

**Alleged Breach Installation of 'Just Eat' projecting sign**

**Date received 18.10.2017**

**ACTION TO DATE: Service of Listed Building Enforcement Notice on 8.12.2017**

#### Background

A complaint was received in October that a new projecting sign had been installed on a Grade II listed building without the appropriate consent. Its presence was considered as unnecessary clutter and harmful to the special interest of the listed building. After correspondence with the perpetrators failed to gain any assurances that the breach would be resolved, it was determined that formal action would be necessary to resolve the breach.

Consequently on 8 December 2017 a Listed Building Enforcement Notice was served upon those with an interest in the land which requires the projecting sign and associated brackets to be removed and that any holes created by the installation of the fixtures are made good. The Notice came into effect 28 days following service of the Notice with the time for compliance being 7 days; therefore its removal is required by 19 January 2018.

#### **SCHEDULE D: EXAMPLES OF BREACHES RESOLVED WITHOUT FORMAL ACTION**

Formal enforcement action is usually the last resort and where negotiations have failed to produce a satisfactory resolution of a breach of planning control. In the vast majority of cases negotiation, or the threat of formal action, is enough to secure compliance with planning legislation and the following are a few examples of how officers have resolved breaches through negotiation.

#### **17/00271/ENF - SOUTHWELL**

A complaint was raised regarding the erection of awnings having been erected between listed buildings. Following correspondence, the awnings have now been removed and the case is now closed.

Before



After



### **16/00213/ENF- SOUTHWELL**

Southwell Town Council raised a compliant regarding the erection of a banner advertisement being displayed without consent. Following correspondence the banner has now been removed and the case is now closed.

Before



After



### **17/00198/ENF - FARNFIELD**

A complaint was received that an area of raised decking had been erected without permission which caused overlooking of the neighbouring property. Following correspondence with the property owner, a planning application was submitted to retain the decking, along with the provision of additional screening between their property and the neighbours. The permission was approved and the additional screening has now been erected. The breach has therefore been resolved and the case is now closed.

Before



After



### **17/00209/ENF - BALDERTON**

The Parish Council raised a compliant regarding the erection of a fence which was higher than the one it replaced, particularly where it projected beyond the frontage of the dwelling. Following correspondence and negotiation, the fence was amended (reduced in height to the frontage) to an acceptable standard and the case is now closed.



Before



After



### **16/00048/ENF - EDWINSTOWE**

The neighbour raised a complaint about possible overlooking of their property as a result of a new residential development taking place adjacent to their property. Following correspondence a new fence was erected which maintains the neighbours privacy without compromising the development. Resolution – tapered fence that protects privacy whilst not imposing on the neighbour. The case has now been closed.



### **17/00277/ENF - BALDERTON**

Neighbours raised concerns that commercial waste was routinely being brought back to a residential property by a tradesman. The occupant was contacted by letter on two occasions, and the matter discussed by telephone once the option of formal enforcement action was raised. The skip which was used to store the waste and had been in situ for a considerable period of time was removed soon after.

Before



After



### 17/00246/ENF - NEWARK

Neighbours brought it to our attention that a large canopy-style structure had been erected without planning permission in the rear garden of a residential property. The site was attended and the issue brought to the attention of the owners and builder. After discussing the methods of resolving the breach through formal enforcement action with the owner by letter and telephone, the roof slope had been changed and the structure had been reduced in height to within permitted development measurements thus resolving the breach.

Before



After



### 16/00322/ENF - FERNWOOD

The Parish Council raised concern that two large advertisement hoardings previously used to advertise the Fernwood development were still in situ some considerable time after all building works had been completed. After bringing the matter to the attention of the developer, the threat of formal action to remove the hoardings prompted the developer to quickly arrange for the signs to be removed.

Before



After



### **RECOMMENDATION**

**That Planning Committee considers the contents of the report and identifies any issues it wishes to examine further.**

Background Papers

Enforcement case files.

For further information please contact Clare Walker on Extension 5834 or [planning@nsdc.info](mailto:planning@nsdc.info)

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