

PLANNING COMMITTEE – 5 NOVEMBER 2019

QUARTERLY ENFORCEMENT ACTIVITY UPDATE REPORT

This report follows on from the report that was presented to Members on 6th August 2019 which highlighted planning enforcement performance during the second quarter of 2019. This report relates to the quarter from 1st July to 30th September 2019 and provides an update on cases where formal action has been taken. It also includes cases which show how the breaches of planning control have been resolved through negotiation.

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

- Schedule A outlines the enforcement activity during the quarter which captures the overall split to show of the cases investigated, how many are found to be a breach of planning or otherwise.
- 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 in a later quarter.
- Schedule C details a summary of formal action taken since the last report was compiled which in this case is for quarter 2 (July to September).
- Schedule D – provides examples of cases where breaches of planning control have been resolved without formal action being taken.
- Schedule E – Notices complied with.
- Schedule F – Enforcement Appeal Outcomes

Headlines Summary

- The number of **cases closed** this quarter **exceeds the cases received** and demonstrates the benefit of the additional temporary resource within enforcement (since mid-June) is starting to pay dividends;
- All enforcement appeal decisions received from the Planning Inspectorate have been dismissed and the enforcement notices upheld – See Schedule F for details.

SCHEDULE A

Table 1

SCHEDULE A: ENFORCEMENT CASES	1st to 31st July 2019	1st to 31st August 2019	1st to 30th September 2019	Totals
Cases Received	56	28	32	116
Case Closed*	54	52	40	146
Notice Issued	1	1	5	7
Notice Complied With	2	1	2	5
Appeal Lodged**	0	0	1	1
Prosecutions/Injunctions***	0	1	0	1

*It should be noted that 'case closed' can include a number of outcomes, which are generally breach resolved (through a planning application or removal of the breach), no breach identified (permitted development or not 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.

** Appeal lodged during Quarter 3, 2019 is:

- 19/00098/ENF (**19/00047/ENFNOT**) appeal received 5th September 2019 - Crossways, Great North Road, Weston relating to the erection of a brick built structure which has not been erected in accordance with the approved agricultural notification. Notice (served 12th August 2019) required rectifying the breach.

Of the cases closed, the reasons for these closures are detailed below in Table 2:

*** Prosecution relates to case 17/00144/ENF (Willow Tree Farm, Easgle Road, Spalford) – The prosecution was taken following the non compliance with a Breach of Condition Notice (BCN). The contravener was found guilty of the offence and was subject to a fine and a contribution to the Council's legal costs. The Council are now aware that the contravener has subsequently complied with the notice and the enforcement case has been closed.

Table 2 (Reasons for Closure)

Month/Year	Total Number of Cases Closed	No Breach (No Further Action required)	Breach Resolved (through negotiation, permission granted etc.)	Breach – No Further Action (not expedient)	Other (such as Duplicate Case)
July 2019	54	26 (48.14%)	17 (31.48%)	7 (12.96%)	4 (7.4%)
August 2019	52	28 (53.84%)	10 (18.51%)	9 (17.30%)	5 (9.61%)
September 2019	40	15 (37.5%)	14 (35%)	9 (22.5%)	2 (5%)
Totals	146	69	41	25	11
Average per month	48.6	23 (46.46%)	13.6 (28.33%)	8.33 (17.58%)	3.66 (7.66%)

SCHEDULE B – SEE SEPARATE SHEET AT END OF THIS REPORT

SCHEDULE C. FORMAL ACTION TAKEN (1st JULY TO 30TH SEPTEMBER 2019)

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

FORMAL ACTION TAKEN IN JULY 2019

<p>Enforcement Ref: 19/00125/ENF</p> <p>Site Address: Usta Grill, 13-15 Castle Gate, Newark, NG24 1AZ</p> <p>Alleged Breach: Without listed building consent, the repointing of the south-west gable end</p>

and the repointing of the first and second storey wall making up the final right-hand bay on the western elevation. The mortar mix includes cement which is not appropriate on this historic building.

Date Received: 29.03.2019

ACTION TO DATE: Listed Building Enforcement Notice was served on 15th July 2019

Background

It came to the attention of officers that unauthorised works had taken place at the property. These works (as set out above) were considered harmful to the special architectural and historic interest of the listed building. Unauthorised works to a listed building is a criminal offence.

A Listed building enforcement notice was therefore served upon all those having an interest in the building on 15th July. The Notice takes effect on 15th August 2019 and the perpetrators/owners have been given 3 calendar months to comply by rectifying the unauthorised works. This includes raking out all cement mortar and repointing with an appropriate lime render.

FORMAL ACTION TAKEN IN AUGUST 2019

Enforcement Ref: 19/00098/ENF

Site Address: Crossways, Great North Road, Weston

Alleged Breach: Structure not being built in accordance with approved agricultural notification.

Date Received: 12.03.2019

ACTION TO DATE: Enforcement Notice served

Background

The Local Planning Authority received notification that a large brick structure was under construction at Crossways, Great North Road, Weston. A site visit found that the structure was a considerably altered version of an agricultural prior notification approved under 18/00264/AGR.

A retrospective planning application was refused (19/01034/FUL) and a planning Enforcement Notice served on the 12th August 2019, requiring considerable amendments to the structure so that the approved prior notification can be implemented lawfully. The Notice has been appealed and the LPA is awaiting a start date from the Planning Inspectorate.



FORMAL ACTION TAKEN IN SEPTEMBER 2019

Enforcement Ref: 19/00190/ENF, 19/00191/ENF and 19/00182/ENF

Site Address: Numbers 15, 17 and 19 Syerston Way, Newark

Alleged Breach: Extension of residential gardens and laying of hard surfacing over a drainage ditch

Date Received: 7th May 2019

ACTION TO DATE: Three Enforcement Notices served

Background

The Local Planning Authority was notified that the three dwellings had collectively laid additional soil/hard surfacing over a drainage ditch and wildlife corridor, in order to facilitate an extension to their residential curtilage. Three retrospective planning applications were considered and refused on the 12th September 2019, on account of its impact on drainage and ecology, with Enforcement Notices served upon each landowner on the same date. The Notices have not yet been appealed and require the reversal of all works within 4 months.

Enforcement Ref: 18/00034/ENF

Site Address: The Workshop, Cockett Lane, Farnsfield, NG22 8JQ

Alleged Breach: Change of use of agricultural land to waste transfer site/storage of materials

Date Received: 25th January 2018

ACTION TO DATE: Enforcement Notice issued

Background

The case revolves around an alleged material change of use of the site.

The case has been investigated concurrently along with Nottinghamshire County Council as there has been an allegation that the land has been used for waste activities.

Investigations initially led to the service of an Enforcement Notice (August 2018), and latterly a Stop Notice (July 2019), by Nottinghamshire County Council against the alleged material change of use of the land for use for waste activities. The service of the Enforcement Notice was the subject of an appeal. In September 2019 the Council were notified by colleagues at Nottinghamshire County Council that the appeal against the issue of an planning enforcement notice by Nottinghamshire County Council (NCC) had been withdrawn. Although the planning Enforcement Notice issued by NCC therefore remains extant, the Council were also notified by colleagues at NCC that the alleged unauthorised material change of use of the land (in terms of ceasing waste import, ceasing waste processing, removed waste and processed waste and removed plant etc. solely associated with the waste use), has now ceased. The requirements that no waste activity takes place remains.

Following the withdrawal of the appeal, officers were therefore of the opinion that the activity taking place on the land at the present time is that associated with aggregate storage and distribution and hence constitutes a new material change of use of the land from agriculture. Officers consider this use of the land to be incompatible with the Development Plan and therefore on 27th September 2019 issued a planning Enforcement Notice (EN). This requires the use of the land for aggregate storage and distribution to cease and the use of the land be returned to agriculture. The period for compliance with Enforcement is 120 days following the date that the notice comes into effect, the 28th October 2019. Whilst issuing the notice it was noted that the land may also be being used for the storage of heavy goods vehicles and machinery. The owner of the land has therefore been reminded a previous planning enforcement notice, issued on 17th August 2007, prohibits the use of the land for the storage of heavy goods vehicles, plant machinery and skips. This enforcement notice remains extant and therefore any breach of this notice is an offence. Officers will be undertaking regular inspections to check compliance with the notice.

Further, a a Breach of Condition Notice was issued on 15th May 2019. The BCN requires the use of the agricultural building for purposes other than agriculture to cease. The date for compliance was 13th August 2019 – 90 days after the notice was served. Officers will be undertaking regular inspections to check compliance with the notice.



Enforcement Ref: 19/00194/ENF

Site Address: 2 Willow Holt, Lowdham, Nottinghamshire, NG14 7EJ

Alleged Breach: Erection of fence adjacent to highway without consent

Date Received: 14th May 2019

ACTION TO DATE: Enforcement Notice issued

Background

The Local Planning Authority received notification that a timber fence of approximately 1.8m in height has been erected along boundaries of the property. The fence encloses the side and rear boundaries, however due to the position of the property as a corner plot, the fence is immediately adjacent to the back edge of the pavement. Planning permission is therefore required as the fence exceeds the maximum 'permitted' height of a means of enclosure.

Attempts were made to resolve the breach of planning without formal action by requesting that the height of the fence be reduced to no more than 1m.

No application was submitted and as the Council does not consider that the fence is acceptable visually, a planning enforcement notice was issued.

The enforcement notice requires the overall height to be reduced to no more than 1 metre.



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

Enforcement Ref: 18/00254/ENF

Site Address: 57 Beacon Hill Road, Newark

Alleged Breach: Unauthorised Construction of Side Extension to Dwelling

Status: Breach resolved

Background

Officers were notified of an unauthorised side extension having been constructed on a dwelling. The works required planning permission and, in the view of Officers, was of an unacceptable design. The requirements of Permitted Development were set out to the owner, who over a period of time cooperatively amended the extension to accord with permitted development conditions. The structure no longer requires planning permission and is now a positive addition to the host dwelling.



Before



After

Enforcement Ref: 19/00105/ENF

Site Address: Bridgend, Blacksmith Lane, Kelham, NG23 5QT

Alleged Breach: Unauthorised Fencing in a Conservation Area

Status: Breach resolved

Background

The Local Planning Authority was notified that a section of domestic hedgerow had been removed and 1.8 metre high timber fencing with concrete bases and posts had been erected without planning permission. The fencing was considered to negatively impact the Conservation Area and highway safety. Meetings were held with the owner of the property,

who relocated the fencing further into the gardenspace, so that the fencing meets the requirements of permitted development.



Before

The impact on highway safety has been improved and the visual amenity of the area improved as a result. Whilst not ideal this now constitutes permitted development such that the breach has been resolved.



After

Enforcement Ref: 19/00269/ENF

Site Address: Drumilly Cottage, Main Street Kirton, NG22 9LP

Alleged Breach: Erection of fence adjacent to highway without consent

Status: Breach resolved

Background

The Local Planning Authority was notified that a fence measuring approximately 1.8 metres in

height had been erected along the side boundary of the property, adjacent to the back edge of the pavement.

The fence required planning permission as the height adjacent to the back edge of the pavement exceeded 1 metre, the maximum height without an application for planning permission.

The owners were requested to reduce the overall height of the section that is adjacent to the highway, in order to resolve the visibility issues of motorists using the adjacent car park.

The impact on highway safety has been improved and the visual amenity of the area improved as a result.



Before



After

SCHEDULE E – NOTICES COMPLIED WITH DURING QUARTER (1st July – 30th September 2019)

In addition to the notices complied with that were issued this quarter and detailed within the sections above, further notices issued previously can also be reported as complied with as follows:

Notices Complied with in July 2019:

Enforcement Ref: 18/00084/ENF

Site Address: The Scarecrow Patch, Eagle Road, Spalford.

Alleged Breach: Unauthorised alterations to land levels, erection of structure for keeping poultry.

Action to Date: Enforcement Notice served 4th April 2018.

Background

In March 2018, Officers were made aware that various works were taking place on a parcel of agricultural land off Eagle Road, Spalford. This included the siting of lorry trailers with windows installed, the erection of a low-rise brick electricity box, the laying of hard standing and alterations to land levels to begin forming a pond.

An Enforcement Notice was issued in April 2018 requiring various works to be undertaken, including the removal of the lorry backs, hard standing and reversal of alterations of land levels. The Notice was appealed and, during the lifetime of the appeal, the land tidied and the lorry-backs clad in timber ready for housing poultry.

Given the changes that occurred, the Planning Inspectorate resolved to grant planning permission for the structure and associated hard standing. The requirement to reverse alterations to land levels was upheld and complied with quickly once this part of the enforcement appeal was dismissed.

Enforcement Ref: 19/00299/ENF

Site Address: Crab Lane, North Muskham

Alleged Breach: Installation of doors and windows at first-floor level without planning permission

Action to Date: Enforcement Notice issued 8th April 2019

Background

In March 2019, Officers were made aware that doors and windows had been installed at first-floor level on the side elevations of 7 Crab Lane, North Muskham. This led to an unacceptable loss of privacy in respect of both neighbouring dwellings. A planning Enforcement Notice was issued on the property requiring the doors and windows to be permanently closed and for obscure glazing to be fitted. A later site visit found that the Enforcement Notice had been complied with in full, and the breach of planning control resolved as a result.

Notices Complied with in August 2019:

Enforcement Ref: 19/00133/ENF

Site Address: The Bearings, Bowbridge Road, Newark

Alleged Breach: The removal of trees in breach of planning conditions.

Action to Date: Temporary Stop Notice and Breach of Condition Notice issued.

Background

In April 2019, the Local Planning Authority was made aware that trees were in the process of being felled on land approved for housing development. Conditions attached to the grant of planning permission forbade the removal of trees during the bird nesting season (that being March to August inclusive). Tree protection measures were also required to be approved and installed prior to development taking place.

A Temporary Stop Notice and a Breach of Condition Notice were issued on the 2nd April 2019, requiring works to trees to cease and the relevant conditions complied with. Works ceased immediately and no further works to trees took place during the bird nesting season, in breach of the Notices.

Notices Complied with in September 2019

Enforcement Ref: 17/00337/ENF

Site Address: Lurcher Farm, Mansfield Road, Farnsfield, NG22 8HY

Alleged Breach: Alleged material change of use of land for storage of caravans

Action to Date: Enforcement Notice issued 12th July 2018.

Date of compliance: 17th September 2019

Background

The initial report alleged the material change of use of the land from a campsite to the storage of 25+ caravans.

The alleged breach was confirmed by a site visit when it was noted that the site was 'permitted' to be used as a campsite via a licence from an exempt organisation, this automatically places a limit of 5 caravans and 10 tents on a site.

Despite extensive negotiations an application for planning permission to retain the use was not submitted and given there was harm arising, a planning enforcement notice was issued on 21st August 2018. The enforcement notice required the owners/occupiers of the land to: Cease the use of the 'land' for the storage of caravans. Remove from the land all caravans which are stationed for storage purposes.

The owners/occupiers appealed the service of the notice, including under Ground (a) (that planning permission should be granted). The appeal was subsequently dismissed on 9th April

2019.

The date for compliance with the enforcement notice has now expired and it is noted that the requirements have been met and the breach of planning control has therefore ceased. Accordingly the planning enforcement case can now be closed.



Enforcement Ref: 17/00253/ENF

Site Address: 11 Newark Road, Ollerton, NG22 9PZ

Alleged Breach: Erection of a large summer house

Date Received: 21.07.2017

ACTION TO DATE: Enforcement Notice were served on 8th February 2018.

Background

The complaint was initially raised in July 2017 and related to a detached outbuilding that was being erected within the rear garden of the property.

Upon inspection it was noted that the structure being erected was a large timber framed structure with a high pitched roof with openings and frames for dormer windows.



The structure was not permitted under Class E (buildings etc incidental to the enjoyment of a

dwellinghouse) as the height of the structure significantly exceeded the maximum 'permitted' height – the eaves are approx. 2.8m (PD 2.5M) and the overall height approx. 5m (2.5m).

Several attempts were made to engage the occupant in discussions as it was considered that the height of the structure was too imposing on the neighbouring properties and there was concern over the potential use taking into account the space in the roof. However, it was also felt that the structure could be made acceptable by reducing the overall height.

Having assessed the development it was considered that the development did not comply with Policies DM5 & DM6 as the development had an unacceptable impact upon the amenity of the neighbouring properties including overbearing impacts, loss of light and privacy.

Further, the structure was built upon a raised platform and as such users of the building were offered the opportunity to look into the adjoining neighbours private garden.

As a result a Planning Enforcement Notice was issued on 8th February 2019. The Notice required the reduction in height of the structure to no more than 2.5 metres, and the reduction of the platform to no more than 0.3 metres. The Notice was required to be complied with by 8th June 2019.

Follow up inspections after the date for compliance with the Notice revealed that no changes had been made to the structure.

As there had been a failure to comply with the ENF Notice, and no response was received to chase up correspondence, the case was referred to NSDC legal department to take legal action as the failure to comply with an ENF Notice is an offence. Following a letter from NSDC legal department an application for planning permission to retain the structure was submitted in January 2018, planning ref 18/01646/FUL. The application was refused as, in the opinion of the Local Planning Authority, the detached garden building had a harmful impact upon the character and appearance of the area by virtue of its design, large scale and massing and would introduce a feature that would be overly dominant and alien for its surroundings. Furthermore the height, scale and massing of the building would result in an overbearing and harmful impact on neighbouring amenity. This is contrary to Policy DM5 (Design) and Policy DM6 (Householder Development) of the adopted NSDC Allocations and Development DPD, the NSDC Householder Supplementary Planning Document and the NPPF being material planning considerations.

The case was then taken up by the NSDC legal dept. again and a further application was then submitted, 19/01048/FUL, to retain the structure with a revised (reduced) roof height – the eaves would remain at the existing height (2.8 metres). The application was approved in August 2019, subject to a condition that the structure being completed in accordance with the revised plans.

I have subsequently inspected the development and note that the roof structure has been removed. The height of the structure is therefore currently 2.8 metres. I noted that the raised veranda has also been removed.



Whilst the structure does not fully comply with the ENF Notice as the height has not been reduced to 2.5 metres, this limit was only imposed as the maximum PD height and having assessed the structure in its current state I consider it to be of an acceptable scale and form for its location. The reduction in roof height significantly reduces its prominence and makes it appear more domestically proportioned, therefore complying with policies CP9, DM5 and DM6, supported by the Householder Development SPD.

The enforcement case has therefore now been closed as it is not expedient to pursue the matter further.

SCHEDULE F – ENFORCEMENT APPEAL OUTCOMES (1st July – 30th September 2019)

Enforcement Ref: 18/00400/ENF & 18/00401/ENF

Site Address: 1 and 8 Home Farm Close, Kelham, NG23 5QB

Alleged Breach: Without planning permission, the material change of use of a C3 dwellinghouse to commercial leisure accommodation.

Date Received: 17.12.2018

ACTION TO DATE: Enforcement Notices were served on 30th January 2019.

Background

Officers received continuing allegations that numbers 1 and 8 Home Farm were continuing to be used by Kelham Hall Limited as commercial accommodation for tourists and wedding guests associated with events at Kelham Hall, leading to regular disruption, parking issues and noise disturbance for local residents. The matter has been investigated in an ongoing capacity and Officers were able to issue Enforcement Notices on both properties.

The Notices were appealed on the grounds that the use did not amount to a breach of planning control. With assistance from local residents, the Planning Inspectorate determined that a breach of planning control had occurred and that the Enforcement Notice should be upheld. Both properties are required to be used for their authorised C3 (dwellinghouse) useage from November 2019.

Enforcement Ref: 18/00190/ENF

Site Address: Belle Vue House, Belle Vue Lane, Blidworth

Alleged Breach: Without planning permission, the erection of a means of enclosure exceeding 1 metre in height adjacent to the highway and the erection of a detached structure.

Date Received: 13.06.2018

ACTION TO DATE: Enforcement Notices were served on 20th July 2019.

Background

The Council received a complaint about several issues at the property, including the erection of a large set of gates and fence and an outbuilding to the front of the property.

Investigations revealed that the new means of enclosure did not have planning permission and as it was the opinion of the Council that the enclosure was unacceptable a planning enforcement notice was issued.

The enforcement notice requires the reduction in height of the enclosure to a maximum height of 1 metre and the outbuilding to be removed completely.

An appeal was made against the notice, including under Ground A (that planning permissions should be granted).

The appeal was dismissed on all grounds and the requirements are therefore required to be complied with by no later than 29th December 2019.



Enforcement Ref: 18/00271/ENF

Site Address: 18 Sherwood Avenue, Edwinstowe, NG21 9NE

Alleged Breach: Unauthorised extension to dwellinghouse.

Date Received: 17.08.2018

ACTION TO DATE: Enforcement Notices were served on 20th March 2019.

Background

The Council received a complaint about erection of a second floor rear extension on the dwellinghouse. Planning permission had not been sought for the erection of the extension which was therefore unauthorised.

In response to the enforcement investigation, an application was submitted retrospectively to retain the extension, application ref 18/02365/FUL. The application was refused due to the unacceptable design and impact of the extension.

A planning enforcement notice was issued that requires the removal of the extension.

An appeal was lodged and dismissed on all grounds and the requirements are therefore required to be complied with by no later than 30th September 2020.



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

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