

PLANNING COMMITTEE – 14 JANUARY 2020

QUARTERLY ENFORCEMENT ACTIVITY UPDATE REPORT

This report relates to the quarter from 1st October to the 31st December 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: Summary of 2019 compared with previous years.
- Schedule C details a summary of formal action taken since the last report was compiled which in this case is for the quarter.
- Schedule D – provides examples of cases where breaches of planning control have been resolved without formal action having been taken.
- Schedule E – Notices complied with.

SCHEDULE A

Table 1

SCHEDULE A: ENFORCEMENT CASES	1st to 31st October 2019	1st to 30th November 2019	1st to 31st December 2019	Totals
Cases Received	46	29	28	103
Cases Closed*	46	39	26	111
Notices Issued	0	0	5	6
Notices Complied With	5	3	0	8
Appeals Lodged**	1	0	0	3
Prosecutions/Injunctions	1	2	0	3

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

** Appeals lodged during Quarter 4, 2019 are:

- 19/00194/ENF (19/00054/ENFNOT) appeal received 19th October 2019 - 2 Willow Holt Lowdham Nottinghamshire NG14 7EJ. Enforcement notice issued against the erection of a fence measuring 2 metres in height adject to the highway. Notice (served 25th September 2019) requires the fence to be reduced to no more tha 1 metre in height.
- 19/00277/ENF – 134 Low Street, Collingham, Newark, NG23 7NL (invalid appeal) indication of landowners intention to appeal against an Enforcement Notice served on the 5th November 2019 was received on the 4th December 2019. The Notice requires the total demolition of a wooden veranda erected on the rear elevation of a positive historic

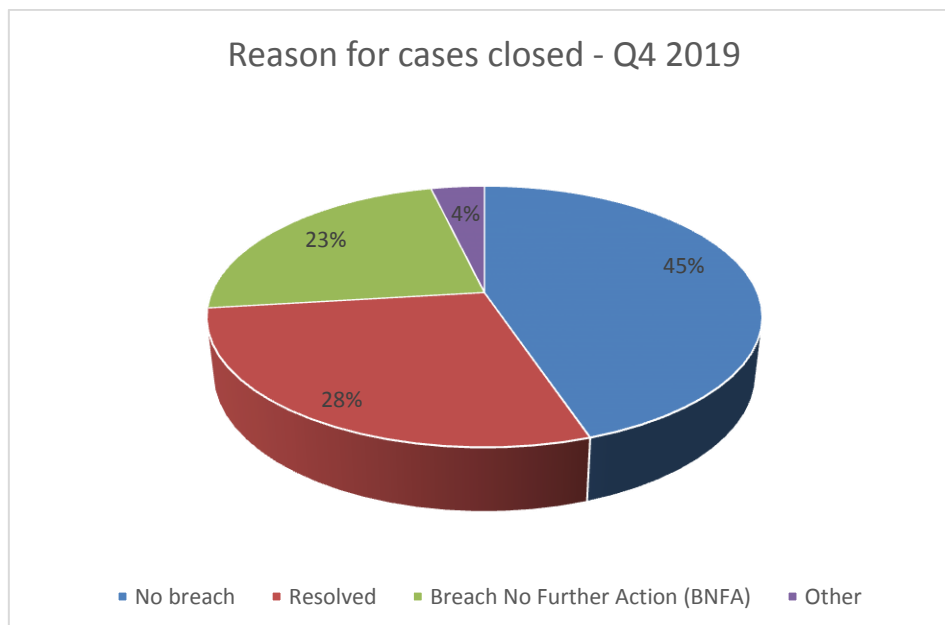
building within the Conservation Area. Awaiting further correspondence from the Planning Inspectorate.

- 18/00034/ENF – The Workshop, Cockett Lane, Farnsfield, NG22 8JQ. The landowners appealed against the revised enforcement notice served on 6th December 2019 on 18th December 2019. The enforcement notice alleges the material change of use of the land from agricultural use to the storage and distribution of aggregates. The Notice requires the unauthorised use to cease and for associated machinery and materials to be removed from the site.

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

Table 2 (Reasons for Closure)

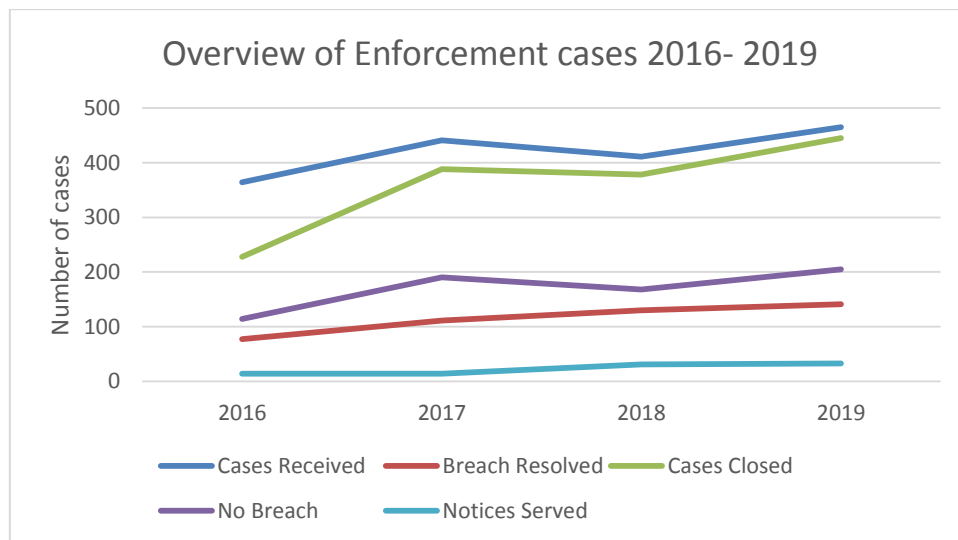
Month/Year	Total Number of Cases Closed	No Breach (No Further Action required)	Breach Resolved (through negotiation, permission granted etc)	Breach – No Further Action (as not expedient)	Other (such as Duplicate Case)
October 2019	46	20	16	9	1
November 2019	39	16	12	9	2
December 2019	26	13	5	7	1
Totals	111	49	33	25	4
Average	37	45%	28%	23%	4%



SCHEDULE B: SUMMARY OF 2019 COMPARED WITH PREVIOUS YEARS

Year	Cases Received	Cases Closed	Breach Resolved	No Breach	Notices Served
2016	364	228	77	114	14
2017	441 (21.1% increase*)	388	111	190	14
2018	411 (12.9% increase*)	378	130	168	31 (121% increase*)
2019	465 (27.7% increase*)	445	141	205	33 (135% increase*)

* compared to 2017



SCHEDULE C: FORMAL ACTION TAKEN (1st October – 31st December 2019)

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.

Enforcement Ref: 19/00249/ENF

Site Address: Land to the south of Stonewold, Gravelly Lane, Fiskerton.

Alleged Breach: Without planning permission or the relevant consents, the removal of historic hedgerows and the erection of fencing and gates over 2 metres in height.

Date Received: July 2019

ACTION TO DATE: Enforcement Notice and Hedgerow Replanting Notice issued on the 5th December 2019.

Background

Officers received notification that considerable changes were taking place to an agricultural field to the immediate rear of a new dwelling under construction on Gravelly Lane, Fiskerton. Officers attended and saw that a historic agricultural hedgerow had been removed without the necessary consents, and the top soil removed from the land in preparation for it being altered to facilitate residential usage without planning permission.

A part-retrospective planning application was received (reference 19/01702/FUL) and refused on the 5th December 2019. During the lifetime of the application, a 2.4 metre green mesh fencing of a design that is considered inappropriate within the Conservation Area was installed without the grant of planning permission.

Following the refusal of the planning application, a planning Enforcement Notice was issued on the same date requiring a reduction in height of the fencing to the 2 metre height allowed under conditions attached to permitted development rights. A hedgerow replanting notice was also issued on the landowner, requiring the historic hedgerow running through the site to be replanted.

The landowner has indicated to Officers a willingness to comply with some elements of the Notices, but an intention to also lodge appeals.

Enforcement Ref: 19/00277/ENF

Site Address: The Old Smithy, 134 Low Street, Collingham, Newark On Trent.

Alleged Breach: Without planning permission, the erection of a wooden verandah on the rear elevation

Date Received: July 2019

ACTION TO DATE: Enforcement Notice issued on the 5th November 2019.

Background

The Local Planning Authority received a report that a wooden lean-to extension had been constructed on the rear elevation of 134 Low Street, Collingham. The property is a positive historic building within the Conservation Area. Officers attended the property and observed that a large wooden verndah had been constructed on the rear elevation without planning permission having been granted.

A Planning Contravention Notice was issued to the occupant, in order to ascertain land ownership details. An enforcement Notice was issued on the 5th November 2019 requiring the structure to be dismantled no later than the 6th March 2020. An appeal may be lodged by the owner to the Planning Inspectorate.



Enforcement Ref: 18/00319/ENF

Site Address: Land adjoining 6 Barkstone Close, Balderton, Newark.

Alleged Breach: Without planning permission, the laying of a vehicular access track, concrete bases and fencing to facilitate a proposed pet-sitting service.

Date Received: October 2018

ACTION TO DATE: A part-retrospective application has been refused (18/02175/FUL) and a corresponding Enforcement Notice has been issued in December 2019.

Background

Officers received reports that ground works were taking place on a parcel of agricultural land located to the rear of 6 Barkstone Close, a residential bungalow. A site inspection found that minor ground works had taken place in order to facilitate a proposed dog-sitting service. Neither the operational development nor the material change of use had been granted planning permission.

Given this, Officers advised the landowner to cease all works and to prepare an application for

planning permission. There was some delay between the submission of the application and its validation due to the need for a flood risk assessment. Members will recall that the application for planning permission 18/02175/FUL was refused by Members in accordance with the officer recommendation on the 6th December 2019.

Officers gave the landowner the opportunity to reverse all ground works without having to resort to formal enforcement action. As the landowner indicated their intention to appeal the refusal to grant planning permission, a planning Enforcement Notice was served on the 11th December 2019. Compliance is required by April 2020, pending any appeal that may be lodged.

Enforcement Ref: 18/00051/ENF

Site Address: Land on the South East side of Fosse Road, Farndon, to the rear (north) of Hardy's Business Park, Hawton Lane, Newark

Alleged Breach: Without planning permission, the laying of hard surfacing, the creation of earth bunds and the material change of use of agricultural land to B8 open-air storage

Date Received: February 2018

ACTION TO DATE: Enforcement Notices have been issued in October 2018 (dismissed at appeal) and re-served in December 2019

Background

Members may recall that Officers were made aware of a considerable amount of unauthorised development that had taken place over a period of over 10 years at 'Hardy's Business Park' in Farndon. As part of this investigation, four retrospective planning applications have approved, some land cleared of a number of HGV trailers, and a Lawful Development Certificate issued for the unauthorised expansion of the industrial site into the agricultural fields to the rear.

Part of this – now lawful – expansion was only undertaken in 2015 and is therefore within the timelimits for enforcement action. A planning Enforcement Notice was first issued in late 2018, but was dismissed at appeal in June 2019 on account of wider site notification being required. Officers have issued two Planning Contravention Notices since this time, and a further Enforcement Notice has been issued in December 2019.



Aerial photograph showing the subject area in red

The Notice requires the removal of all hard standing, earth bunds and non-agricultural items, storage containers and vehicles from the land, within a 6 month compliance period. Officers understand that it is the landowners intention to appeal the Notice, though this has not yet been lodged.

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 with Nottinghamshire County Council (NCC) 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 NCC 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 NCC that the appeal against the issue of an planning enforcement notice by 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 that 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 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: 16/00323/ENF

Site Address: Home Farm, 29 Main Street, Upton, Newark On Trent, NG23 5ST

Alleged Breach: Poor condition of Listed Building adversely affecting amenity of area

Status: Ongoing direct action to resolve

Background

Concerns have been raised about the condition of this property for a considerable time, not just about the overall condition of the land and its considerable impact on the amenity of the area, but also the overall state of the building as it is Grade II listed.

Following unsuccessful attempts to persuade the property owner to improve the condition of the building and land, a notice was issued by the Council under Section 215 (Power to require proper maintenance of land) of the Town and Country Planning Act 1990.

The Section 215 Notice was issued on 16th May 2017 and came into effect on 14th June 2017 and required all measures to be undertaken by the 14th August 2017.

Following failure to comply with the notice the Council sought court proceedings against the defendant under Section 216 (penalty for non-compliance with s215 notice) of the Town and Country Planning Act. On the 30th November 2017 the defendant was found guilty of an offence under this Section-

Further attempts were subsequently undertaken to persuade the owner to rectify the condition of the site. However, these were again unsuccessful.

A site inspection was undertaken on the 7th February 2019 and it was noted that there has been a failure to comply with the Section 215 Notice.

Following the latest failure to comply with the notice, the Council sought further court proceedings against the owner. On the 5th August 2019 the owner was again found guilty of an offence and as a second offence was fined £3750 plus £833 costs.

Following the latest legal proceedings it was concluded that there was little chance of further legal proceedings resolving the matter in the near future. Accordingly the Council commenced direct action to undertake the works that were required to be undertaken within the scope of the S215 Notice. These works included:

- Removing all vegetation growth from the exterior of the building;
- Cutting down to ground level all vegetation;
- Replacement or repair/ maintenance of all timber windows, including any broken glazing;
- Re-fix any loose pantiles.

The works to repair the windows etc. are ongoing but below are photographs showing the ongoing clearance works.



Before



Before



After



After



Before



After

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: 19/00090/ENF

Site Address: 106 Hawton Lane, Balderton, Newark On Trent

Alleged Breach: The formation of a means of access without planning permission; and non-compliance with approved boundary treatments.

Status: Breach resolved

Background

The property in question has been undergoing considerable renovation for a number of years, with applications dating back to 2014. As the project neared completion, the existing boundary fencing and hedgerow was removed from the side elevation, and replaced with 2 metre high fencing along the side and front elevation. A formation was created on the side elevation to provide access to the rear garden from Russell Avenue.

After much correspondence including the serving of a Planning Contravention Notice, the owner reduced the height of the boundary fencing on the front and side elevation, stained the fencing an agreed colour and obtained retrospective planning permission for the access point on Russell Avenue.



Before



After

Enforcement Ref: 19/00244/ENF

Site Address: 13 Main Street, Sutton on Trent, Newark.

Alleged Breach: Without planning permission and the relevant consent, removal of trees and a historic boundary wall within the Sutton on Trent Conservation Area.

Status: Breach resolved

Background

The Local Planning Authority received notification that as part of renovation works, a historic boundary wall measuring approximately 1.2-1.5 in height had been demolished, and two mature trees removed. Both acts within the Conservation Area required consent and constitute a criminal offence without satisfactory defence for having done so.

Officers made the owner aware of the seriousness of the breach, and undertook an investigation to obtain evidence and reasonings why the works had been undertaken. Written letters of support from a number of professionals, including East Midlands Building Control, stated that the historic wall was in a poor condition and unstable, providing a health and safety hazard to the public. A similar defence was given for the loss of the trees, which were said to have been uprooted during the demolition of the wall. The evidence available indicated that in any event, the wall would have required demolition and rebuild.

Consent was approved for its rebuild with considerable input from Conservation Officers (reference 19/01364/FUL). A site inspection in December 2019 found that the wall has been completed to a satisfactory finish, and the breach thereby resolved without having to issue an Enforcement Notice.



Photograph of the rebuild wall and planted trees

Enforcement Ref: 19/00206/ENF

Site Address: 39 Kirk Gate, Newark.

Alleged Breach: Without Listed Building Consent, the fixing of brackets, advertisements and other accretions to an important grade II listed building

Status: Breach resolved

Background

In summer 2019, Officers were made aware that the occupier of 39 Kirk Gate, a retail premises, had affixed low-quality, inappropriate signage and other minor fixtures to the principal elevation of the architecturally significant 39 Kirk Gate.

Letters were issued by Officers to the occupant, tenant and landlords of the building notifying them that a criminal offence had occurred, and Officers intentions to take legal action if the offence persisted. Notices were drafted, including a request for information; however through repeat correspondence with the landlord, the signs and fixtures were removed short of formal enforcement or court action.



Before



After

Enforcement Ref: 19/00417/ENF

Site Address: Brookside Station Road Clipstone Nottinghamshire NG21 9AQ

Alleged Breach: Alleged breach of condition of planning permission 18/01253/RMA – protection of existing hedgerow

Status: Breach resolved

Background

Planning permission was granted in September 2018 for development including the demolition of an existing bungalow and outbuildings, formation of a new site access and erection of 6 detached bungalows with associated landscaping and vehicular access. In agreeing the permission a condition (3) was imposed that sought to protect and retain an existing hedgerow that bounds the application site and the adjacent nature reserve at Vicar Water by requiring that no machines shall be used and only hand digging shall be undertaken when excavating beneath the crown spread of any trees or retained hedgerows on site. Further, any roots exposed over 25mm diameter should be retained, undamaged and protected.

The enforcement cases resulted from a report that works on the site had commenced and this included deep excavations in the vicinity of the existing hedgerow by a mechanical digger.

It was noted that there was a large pile of vegetation in the centre of the site and no protection of the hedgerow along the southern boundary (adjacent to Vicar Water) where there was evidence of a large excavation at some recent point.

Whilst it would have been possible to issue a Temporary Stop Notice (TSN) and Breach of Condition Notice (BCN) to require the works to cease and the required protection to be installed, it was mutually agreed that no further development would take place in the vicinity of the hedgerow until the prescribed protective fence had been erected.

The fencing was subsequently erected on the same day and I have subsequently monitored the site to check on the condition of the hedge and have noted that its health remains good and provides a suitable screen to the site.



Excavations taking place at time of initial investigation



Fencing having been erected following enforcement negotiations



Hedge at close to completion of the development

SCHEDULE E – NOTICES COMPLIED WITH DURING QUARTER (1st October – 31st December 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:

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

Site Address: 1 and 8 Home Farm Close, Kelham, Newark.

Alleged Breach: Without planning permission, the change of use of two residential dwellings to commercial leisure accommodation.

Action to Date: Enforcement Notices served in January 2019.

Background

Members will recall that planning Enforcement Notices were issued against both 1 and 8 Home Farm Close, as residential properties being rented by Kelham Hall Limited to provide event accommodation to groups including wedding parties. Enforcement Notices were issued in January 2019 after an extended period of investigation alongside local resident assistance.

Planning appeals lodged by Kelham Hall Limited were both dismissed, and the properties required to be used only for residential purposes. In October 2019, the Local Planning Authority was made aware that the properties had been returned to their respective owners and the Kelham Hall Ltd occupation ended.

Enforcement Ref: 19/00210/ENF

Site Address: Land adjacent to the Old Rectory, Southwell.

Alleged Breach: Without planning permission or listed building consent, the demolition of a curtilage listed building.

Action to Date: Temporary Stop Notice issued in May 2019.

Background

Officers received reports that during the implementation of schemes approved in 2016 for conversion of a curtilage listed outbuilding to a single dwelling (references 16/02036/FUL and 16/02037/LBC), the structure had been almost entirely dismantled. This amounts to a serious breach of planning control and a criminal offence without a satisfactory defence.

Enforcement Officers and Conservation Officers attended the site immediately and a Temporary Stop Notice was issued on the land, requiring all works to cease.

The owner and builder was interviewed under caution by Officers, to establish the series of events which led to the collapse of the building. Evidence provided suggested that the building was unstable beyond retention, and suddenly collapsed without being able to be secured.

Retrospective planning permission and listed building consent has been authorised for the collapse of the building and its rebuilding (references 19/01305/FUL & 19/01306/LBC) which the LPA is now monitoring to ensure compliance and restoration of the building as best as possible given the circumstances.



2016 Photograph of the collapsed building

Enforcement Ref: 17/00144/ENF

Site Address: Willow Tree Farm, Eagle Road, Spalford, Newark On Trent, NG23 7HA

Alleged Breach: Unauthorised storage of large number of cars in breach of a planning condition (09/00920/FUL)

Action to Date: Breach of Condition Notice (BCN) issued – prosecution proceedings taken.

Background

The case was originally investigated under application reference 15/00302/ENF. This related to the alleged unauthorised use of land for the storage of 300+ cars on a paddock adj to Willow Tree Farm (WTF) but being leased by the owners of WTF.

Upon resolving 15/00302/ENF it was noted that there was a significant number of cars being stored on WTF itself. The land benefits from planning permission granted on 18th February 2010 (reference 09/00920/FUL) for "Change from agricultural to valeting and storage (Retrospective)". A permission that was granted retrospectively as the use had already commenced without planning permission. The permission is subject to 1 condition that specifies the following;

"Unless otherwise agreed in writing by the Local Planning Authority, this permission shall be read in accordance with the following plans:-

Site location plan received 23rd November 2009

Block Plan received 7th September 2009

The 'Block Plan' referred to in the condition clearly shows parking for 25 vehicles only to the east of the existing building. I initially inspected the land in question in February 2017 and counted over 200 cars on the land.

On the 5th May 2017 I inspected the site again and recorded that there was significantly more cars parked on the land than permitted by planning permission 09/00920/FUL.

An application was received on 4th May 2017, reference 17/00852/FUL. The application description is "Application for the removal/variation of condition 1 attached to application 09/00920/FUL; Change from agricultural to valeting and storage (Retrospective)". The information submitted within the application details that the changes will account for an extra 75 cars stored at the site (40 for the applicants 'personal' use).

Application ref. 17/00852/FUL was refused by the local planning authority on 25th September 2017. The reasons given for refusing the application were contained within the decision notice.

On the 25th September 2017 the Council issued a BCN that alleges a breach of condition:1 of planning permission 09/00920/FUL. The BCN requires the following actions to comply with the condition;

As the person responsible for the breach of condition specified in paragraph 4 of this notice, you are required to comply with the stated condition by taking the following steps:

- (1) Reduce the number of cars being stored on the land to no more than 25 vehicles and do not exceed this number. Ensure that any vehicles being stored on the 'land' are so arranged as to comply with the 'Block Plan received 7th September 2009' (included along with this Notice for reference) as part of planning permission 09/00920/FUL."

The time for compliance with the BCN is 120 days after the notice takes effect (25th October 2017). The date for final compliance was therefore 21st February 2018.

An appeal against the refusal of planning application 17/00852/FUL was dismissed on 4th June 2018. Following the dismissal of the appeal it would be necessary to comply with condition 01 of permission 09/00920/FUL and the BCN that was issued on 25th September 2017, by reducing the number of cars stored on the site to no more than 25.

As the land owner failed to comply with the requirements of the BCN the case was reported to Nottingham Magistrates Court in August 2019 and Mr Hodson was found guilty and fined.

In response to the court proceedings the land owner confirmed acceptance of the necessity to comply with the requirements of the BCN.

A site visit was arranged for 17.10.2019 where it was noted that the number of cars being stored had been reduced to less than the number permitted by the consent.

The breach of planning control has therefore been resolved and the enforcement case has now been closed.



September 2018



September 2018



October 2019

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 Richard Marshall on extension 5801, Chris Briggs on extension 5391, or planning@nsdc.info

Lisa Hughes
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