

## **Southern Planning Committee**

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**Date of Meeting:** 15 March 2023

**Report Title:** Performance of the Planning Enforcement Service

**Senior Officer:** David Malcolm - Head of Planning

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### **1.0 Report Summary**

1.1 The purpose of this report is to provide the Southern Planning Committee with information relating to the activities and performance of the Council's planning enforcement service during the period 2021 and 2022 including a status report on those cases where formal enforcement action has already been taken.

### **2.0 Recommendation**

2.1 Members are requested to note the content of the report.

### **3.0 Reason for Recommendation**

3.1 The information contained within the report is to update Members on performance only.

### **3.0 Background**

#### **3.1 Introduction**

3.2 The reporting period for this updated is for 2021 and 2022.

3.3 Members may recall that the last report made reference to a significant proportion of officer time being taken up by a single case during the latter part of 2020, i.e. the unauthorised material change of use of land to a use as a residential caravan site in Mobberley. That continued into the early part of 2021 when it was necessary for the Council to instigate committal proceedings in relation to the site owners failure to comply with an injunction. In May 2021 the owner was convicted on 10 counts of contempt of court and was sentenced to eight months jail for each offence to run

concurrently, suspended for two years. They were also ordered to pay the Council's legal costs and to make an interim payment of £25k by 1<sup>st</sup> June 2021. Officers continue to pursue the interim payment.

- 3.4 In addition to this the Council successfully defended its decision at appeal to refuse planning permission for the change of use of the land and the Enforcement Notice issued in relation to the unauthorised material change of use to a residential caravan site.
- 3.5 As Members have previously been advised the Council only uses its powers to seek an injunction in exceptional circumstances. Regard must be taken to the fact that anyone named in that injunction who breaches it may be held in contempt of court and may be imprisoned, fined or have their assets seized. Therefore, such action should only be taken in relation to the most serious breaches of planning control. However, in 2022 it was again considered necessary to apply to the High Court for an injunction against the owner of land at Six Acres, Wirswall Road, Wirswall.
- 3.6 On 3<sup>rd</sup> October 2022 His Honour Judge Bird granted an injunction with immediate effect. It requires the landowner to remove buildings and hardstanding from the land by May 2023 and restore the land to its condition before the unauthorised development took place by August 2023.
- 3.7 The landowner was required to pay the Council's costs of £18,597 within 21 days of the court hearing. These costs remain outstanding and further action is being taken to recover them.
- 3.8 Once again it will be necessary for the Council to take the matter back to court for committal proceedings if the injunction is not complied with.
- 3.9 It is interesting to note the Judge's comments on handing down his judgement. He concluded that the parties had "thumbed their noses" at the law and reprimanded them for wasting council resources and money during times when people are struggling financially. He recognised that the council has acted professionally in the face of abuse from the landowner and gave special recognition to the professionalism of the planning officers involved.
- 3.10 Gathering evidence in relation to the Council's application for an injunction was particularly challenging having regard to the owners' behaviour and it required officers to obtain a court warrant each time they required access to the land.
- 3.11 Another noteworthy case is in relation to a development of 263 dwellings in Crewe. Owing to the developers' failure to obtain a discharge of a contaminated land condition in a timely manner planning permission for the development expired. This left each and everyone of the properties without the benefit of planning permission and potentially liable to enforcement action despite the majority of properties being occupied. Officers had endeavoured to work with the developer to resolve outstanding

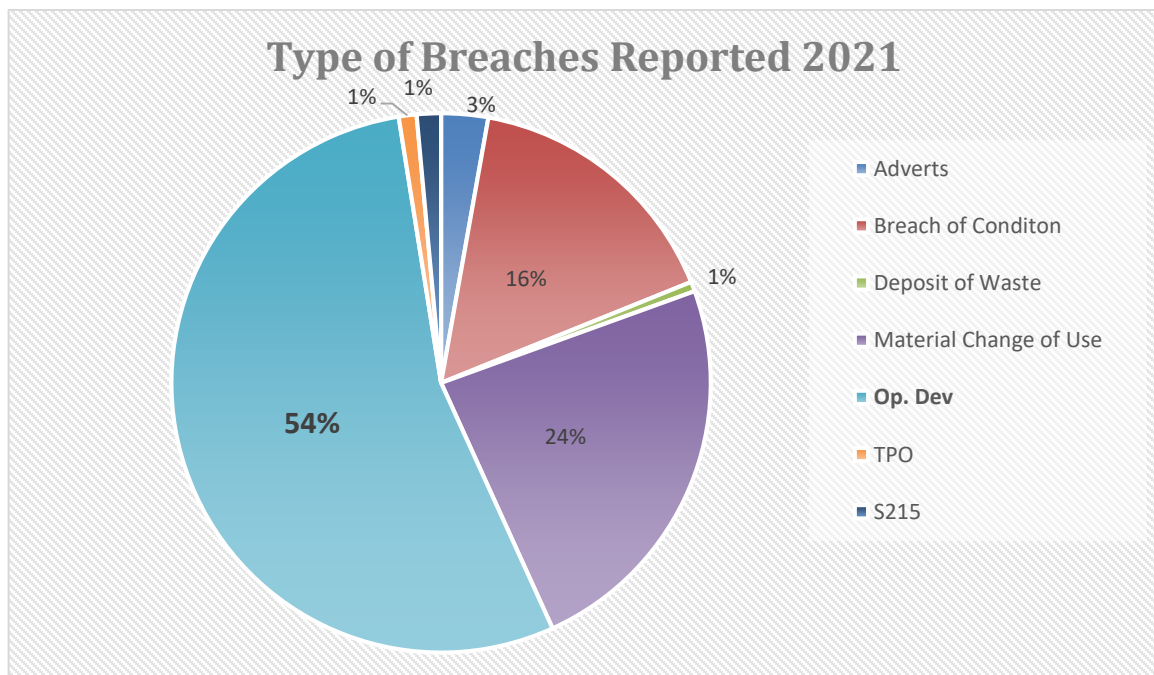
- requirements of the condition and the time put in by colleagues in Environmental Protection providing specialist advice should not go unrecognised. However, a point was reached whereby a decision was issued refusing to discharge the condition.
- 3.12 A further planning application has now been submitted in an attempt to regularise the current breach of planning control.
- 3.13 This case serves to demonstrate the reliance the service has on other disciplines within the Council to support the works which it is undertaking. Collaborative working is an essential part of the process and a lack of resources within other services can impact on service delivery in planning enforcement.
- 3.14 Recently the role of planning enforcement has hit the spotlight nationally. In November 2022 the Royal Town Planning Institute, town planning's professional body issued a research paper "Planning Enforcement Resourcing – The scale and nature of resourcing teams." The findings of this report mirror the experiences of Cheshire East.
- 3.15 Resources and recruitment remain challenging for Cheshire East, with currently 3 vacancies within the enforcement team. As a result, (as they should always in any event) Officers do have to focus on much of their time on those cases where clear and demonstrable harm is being or is likely to be caused.
- 3.16 The report notes that 73% of survey respondents had struggled to recruit in recent years at both junior and senior level. The resultant lack of resources inevitably impacts on the time it takes to investigate alleged breaches of planning control and to act where appropriate. Added to this is the complexity of some cases which can absorb a significant amount of time which at first glance is not always evident to the wider public.
- 3.17 It is also not often possible to share with Members the reasons why some cases are particularly complex having regard to protecting the integrity of evidence and ensuring due process is not compromised. It only tends to be when a case is concluded that some of the reasons for protracted timescales become apparent.
- 3.18 Report Format
- 3.19 The information contained in this report is divided into three sections:
- 3.20 Paragraphs 3.23 - 3.32 provide a summary of investigative activity and formal enforcement action undertaken during 2021 and 2022.
- 3.21 Section 4 provides an update of those cases where formal enforcement action has been authorised and has taken place.
- 3.22 Section 5 Advises on future reports.

### 3.23 Reported Information

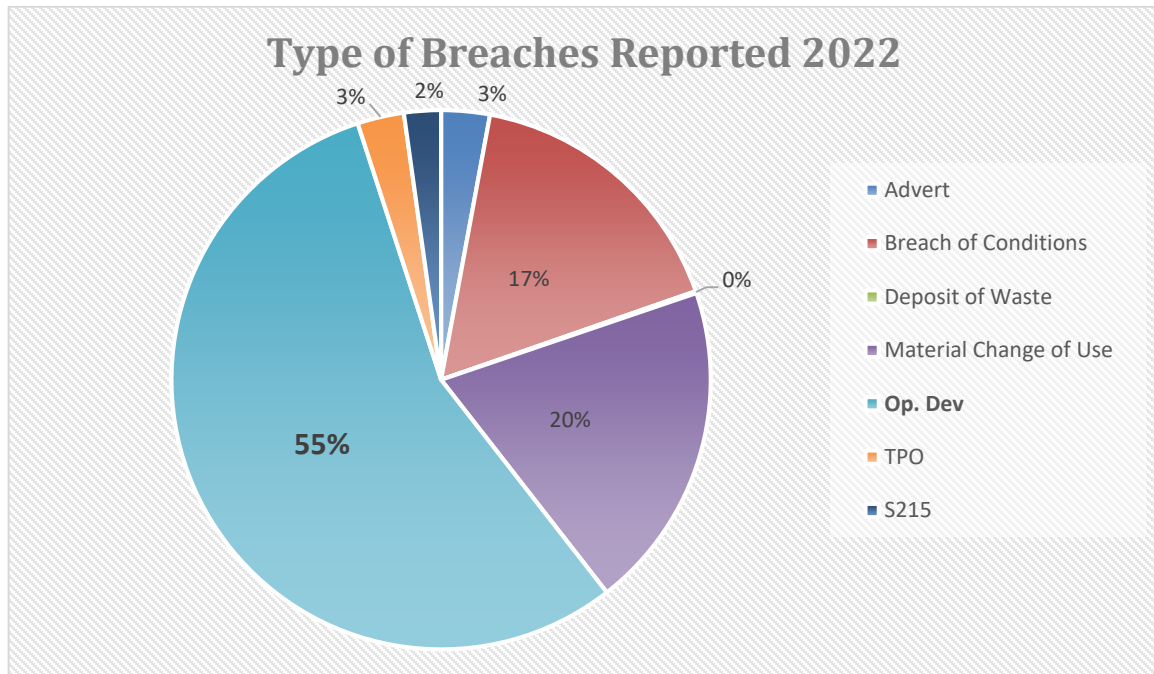
3.24 It will be noted from Charts 1 and 2 that the most reported type of breach relates to operational development. Perhaps because this is the easiest to spot and tends to have a greater impact on complainants. Of the reported breaches relating to operational development 237 were closed in 2021 and 213 were closed in 2022 as no breach had been identified, the majority being permitted development. With the continued liberalising of permitted development rights it must be recognised that there is a significant amount of development that the Local Planning Authority (LPA) has no control over regardless of the impact that it may have on a complainant. It is important to have awareness of this to manage expectations and that that it is not a case of the LPA failing to act.

3.25 It is also important to note that the role of investigating officers is one of impartiality, it is not their role to champion one person's cause over that of another. In this regard it is crucial to carefully manage customer's expectations. Where a breach of planning control is identified any decision to take enforcement action must have an evidential base sufficient to be relied upon at any resultant appeal as well as having regard to local and national planning policy.

**CHART 1**



## CHART 2



3.26 Enforcement cases are given an initial priority when they are received based on the apparent harm being or likely to be caused. The priority determines the timescale within which officers endeavour to carry out their first visit. (It is not always necessary to carry out a site visit). Charts 3 and 4 below provide a breakdown of allocations for the calendar year 2021 and 2022.

### **Priority 1 – High - Site visit within one working day**

A report of an alleged breach will only be allocated as a P1 where it appears to officers of the Council that irreparable harm is being, or is likely to be, caused to an historic/ecological asset or where there is the potential for irreparable harm to the environment, or members of the public. These include:

- Unauthorised works to listed buildings
- Unauthorised demolition in a Conservation Area
- Development causing immediate and irreparable harm to an area of land which has special protection.
- Development causing serious danger to the public (This does not include unsafe working practices or parking of operatives or delivery vehicles on the highway. These are matters that the Council cannot control and should be reported directly to the Health and Safety Executive or the police respectively.)
- Unauthorised works to, or affecting, trees covered by a Tree Preservation Order, or in a Conservation Area.

## **Priority 2 – Medium – Site visit within 5 working days**

A report of an alleged breach will be allocated as a P2 only where a significant degree of harm is likely to or is occurring in the opinion of officers of the Council. These include:

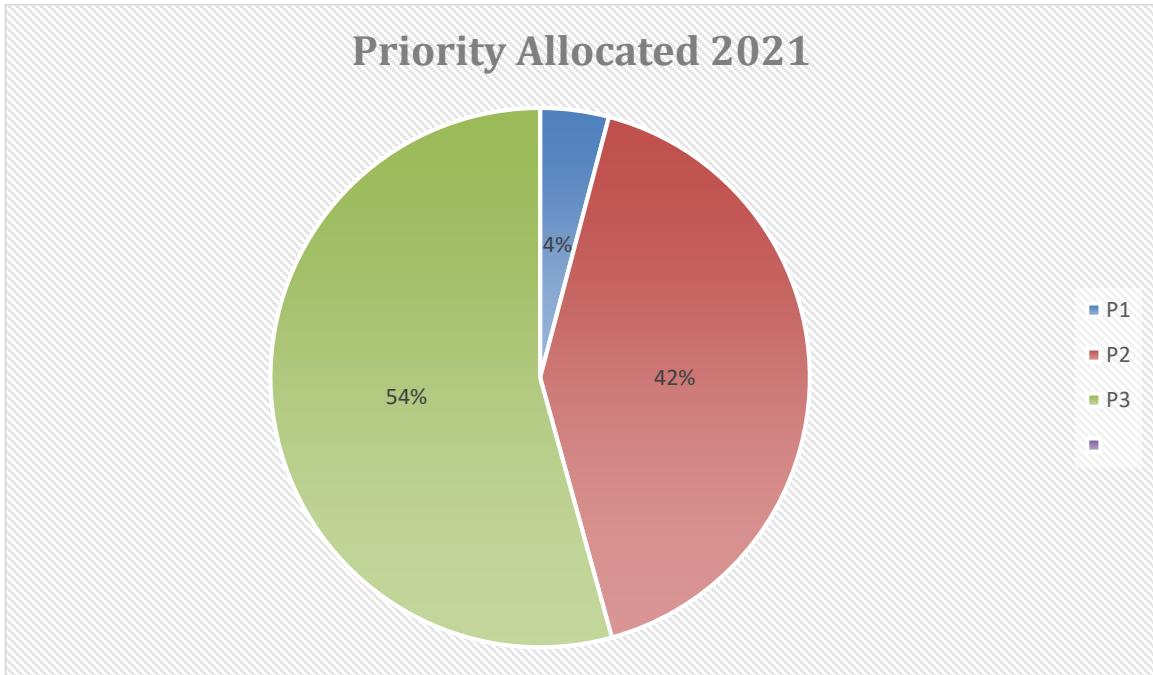
- Building work that is already in progress
- Development which is potentially immune from enforcement action within 6 months (following a period of 4 years in relation to building works already undertaken and 10 years in relation to a material change of use).
- Development causing serious harm to its surroundings or the environment
- Breaches of Condition/non-compliance with approved plans which is considered by officers of the Council to be causing serious harm
- Development which represents a clear breach of planning policy and is unlikely to be granted planning permission.

## **Priority 3 – Low – Site visit within 15 working days**

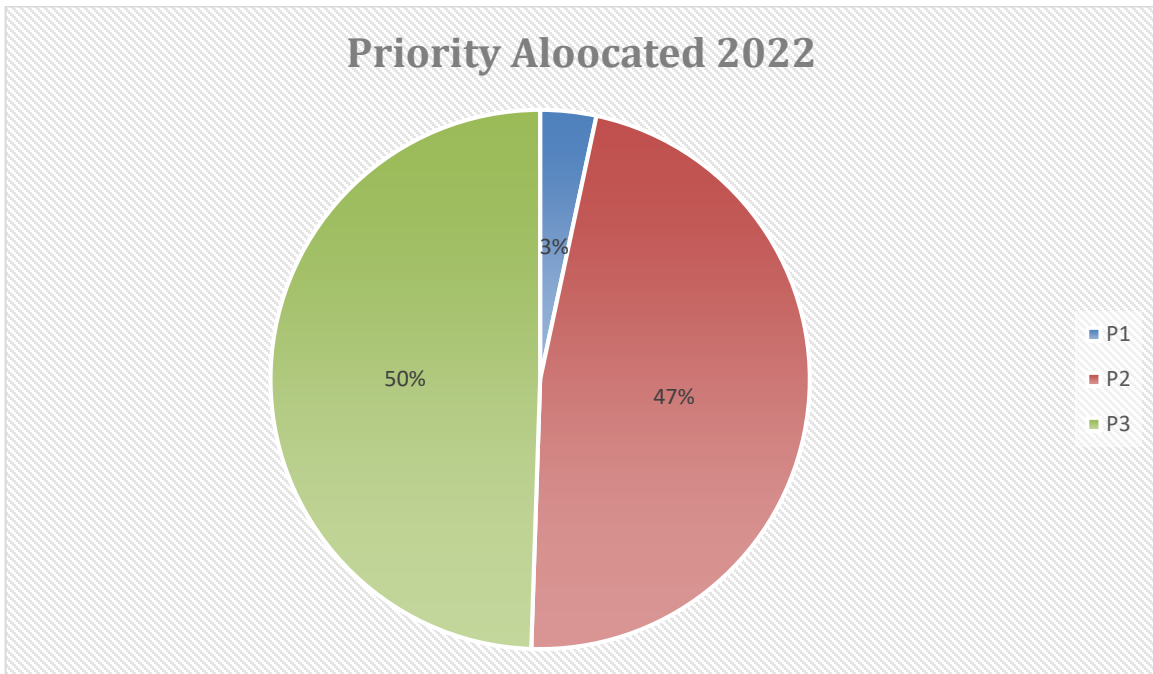
In all other instances and where no significant degree of harm is likely to result the Council will allocate a report of an alleged breach as a P3. These include:

- Other building work which is complete, e.g. an extension which already has a roof on it.
- Development not causing significant harm to its surroundings or the environment - where the breach is technical in nature or is a minor deviation from a planning permission.
- Advertisements.
- Breaches of condition/non compliance with approved plans causing no significant harm to, or no harm to, the character or appearance of an area e.g. where a window has not been glazed with obscure glass and the development is not yet occupied.
- \*Development which is likely to be permitted development, - the erection of sheds, outbuildings, porches, rear single storey extensions. (See link below)
- \*Minor domestic development e.g. fences, satellite dishes (see link below)
- Untidy Land, i.e. where land is having an adverse impact on the appearance of an area. (This does not extend to land which is merely overgrown).

**CHART 3**



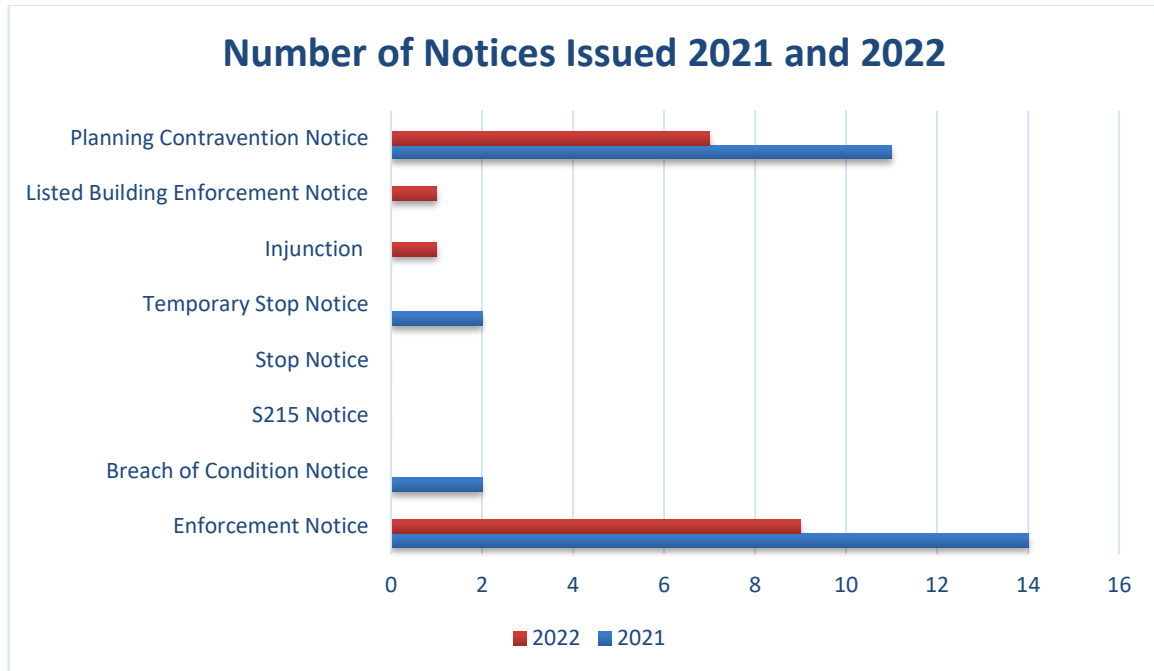
**CHART 4**



### 3.22 NOTICES SERVED

3.23 Charts 5 shows the breakdown of notices served annually in 2021 and 2022.

**CHART 5**



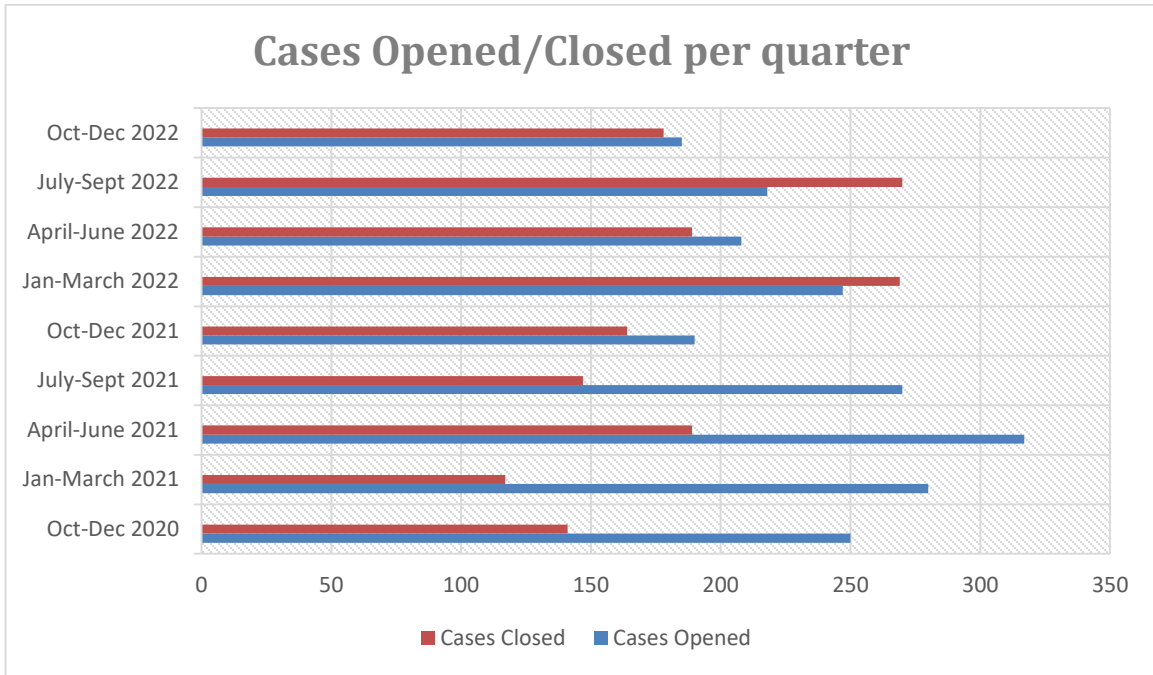
3.24 Members will note that a total of 53 notices have been served over the reporting period, a not insignificant number which averages to nearly 2 notices being issued each month.

3.25 Also during the reporting period 15 enforcement appeals were lodged. Out of these 9 have been determined. One appeal was withdrawn, one part allowed part dismissed with all others being dismissed. This represents an extremely good performance at appeal.

3.26 The service continues to progress prosecutions where appropriate but it is only possible to report outcomes in relation to these in order that the Council's case is not prejudiced in any way. Where appropriate a press release will be issued contemporaneous to the completion of legal proceedings.

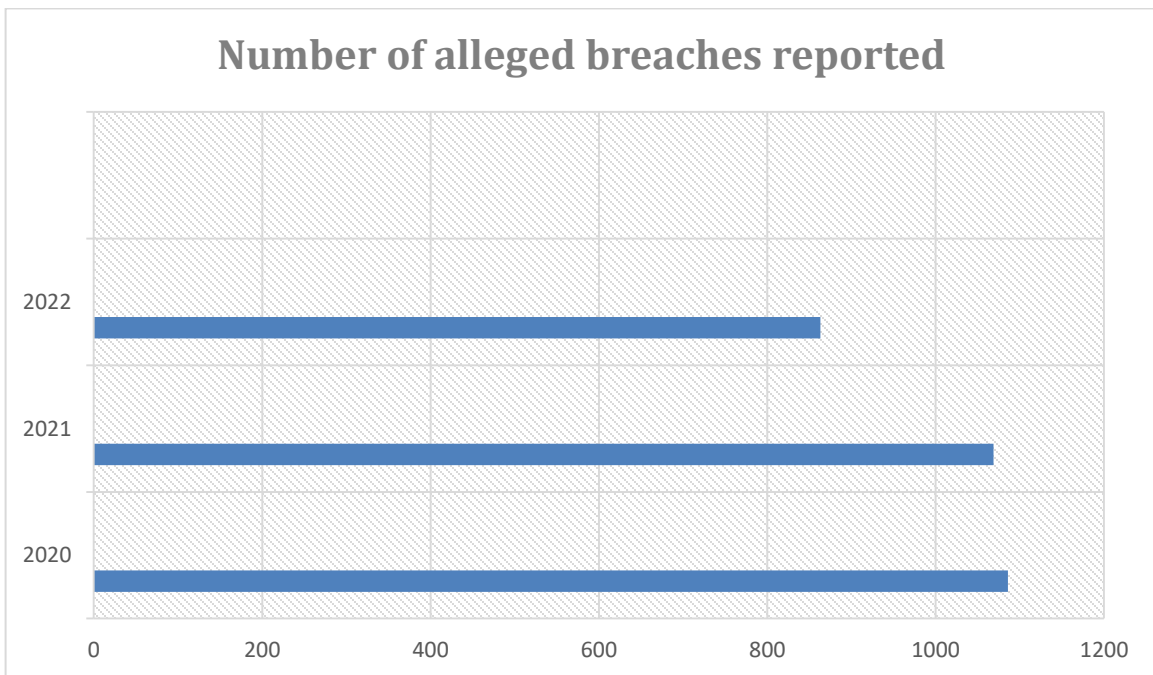


**CHART 6**



3.27 Whilst the number of reported alleged breaches fell in 2022 there remains a significant backlog of cases and a lack of resource. Consequently, the small drop in numbers has not served to reduce officer workloads. Efforts continue to be made to work through the back log with cases being reviewed and RAG rated.

**CHART 7**



### **3.28 Service Improvement**

- 3.29 Additional information has been provided for customers on the Planning Enforcement web pages of the Cheshire East website. This not only informs them of the enforcement process but also signpost customers to other services/agencies which may be better placed to assist them with their enquiry where it is not a matter which falls under the jurisdiction of planning enforcement.
- 3.30 Since the last report to Members the revised Planning Enforcement Policy has been adopted and is available to view on the Cheshire East website [Planning enforcement November 2020 \(cheshireeast.gov.uk\)](https://www.cheshireeast.gov.uk/planning-enforcement-november-2020).
- 3.31 Members will no doubt be aware that the Planning Service is in the process of transitioning to a new computer system. It is envisaged that this will bring significant benefits to not only officers using the system but also in the monitoring of workflows. It should also improve the communication of outcomes of investigations to both Members and customers.
- 3.32 It is anticipated that it will require less keyboard time for officers which in turn will free up time to focus on investigating alleged breaches of planning control. The new system should be operational by the summer of 2023.

### **4.0 Update on Formal Enforcement Action Already Taken**

- 4.1 Whilst the majority of the work of the enforcement team involves investigating reports of suspected breaches of planning control, the Appendix attached to this report details the status of those cases where it was appropriate to take enforcement action and serve a formal notice.

The cases are listed in Ward order.

### **5.0 Future Reports**

- 5.1 The next report will be presented in April 2024 and will contain information for the last quarter of 2022/23 and the four quarters of 2023/24.

### **6.0. Implications of Recommendation**

#### **6.1 Legal Implications**

- 6.1.1 No direct implication

#### **6.2 Finance Implications**

- 6.2.1 No direct implication

### **6.3 Policy Implications**

6.3.1 No direct implication

### **6.4 Equality Implications**

6.4.1 No direct implication

### **6.5 Human Resource Implications**

6.5.1 No direct implication

### **6.6 Risk Management Implications**

6.6.1 No direct implication

### **6.7 Rural Communities Implications**

6.7.1 No direct implication

### **6.8 Implication for Children & Young People/Care for Children**

6.8.1 No direct implication

### **6.9 Climate Change -**

6.9.1 No direct implication

### **6.10 Public Health Implications**

6.10.1 No direct implication

### **6.11 Ward Members Affected**

6.11.1 All wards are affected

## **7.0 Access to Information**

7.1 The following document is appended to this report

Appendix 1 – Status report on cases where formal enforcement action has been taken.

## **8.0 Contact Information**

**8.1** Any questions relating to this report should be directed to the following officer.

Name: Deborah Ackerley

Job Title: Principal Planning Officer (Enforcement)

Email: [Deborah.ackerley@cheshireeast.gov.uk](mailto:Deborah.ackerley@cheshireeast.gov.uk)