

Growth and Regeneration Scrutiny Commission

29th September 2022



Report of: Gary Collins – Head of Development Management

Title: Planning Enforcement Review

Ward: All

Officer Presenting Report: Gary Collins, Head of Development Management

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Recommendation:

The Commission Members consider and comment on the contents of the report.

The significant issues in the report are:

To provide the Growth & Regeneration Scrutiny Commission the opportunity to review the Planning Enforcement function within Development Management, its operational set up, staffing levels and its performance.



1. Summary

This report has been prepared for the Scrutiny Commission to have an insight into the planning enforcement function, its operational capacity, its reporting, resource, and performance. The report includes details on the following points

- The role of the Enforcement function within the context of the Planning system
- The legislation which it operates within
- How the team carries out its function
- The published Local Planning Enforcement Plan
- Performance data
- Two case studies in appendices

2. Context

2.1 The Planning Enforcement team is part of the Development Management Service and sits within Economy of Place. Its primary function is to investigate breaches of planning control and take an appropriate form of action. The National Planning Policy Framework (NPPF) sets out that Planning Enforcement is important as a means of maintaining public confidence in the planning system. The team react to reports of breaches of planning control received by various channels; principally through reports received from members of the public through BCC's [webpage](#); via Councillor enquires; stakeholder and internal teams.

2.2 The Planning Enforcement team have a responsibility to investigate any breach of planning control as defined in section 171A of the Town & Country Planning Act 1990 as the carrying out of development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted. When investigating a reported breach of planning control, the team must consider several factors when deciding on a course action including the NPPF, the Government's Planning Practice Guidance, the relevant policies of the Local Plan and all other relevant material planning considerations. The NPPF sets out that the ultimate decision to take enforcement action is discretionary and that Local Authorities should act proportionately in responding to suspected breaches of planning control.

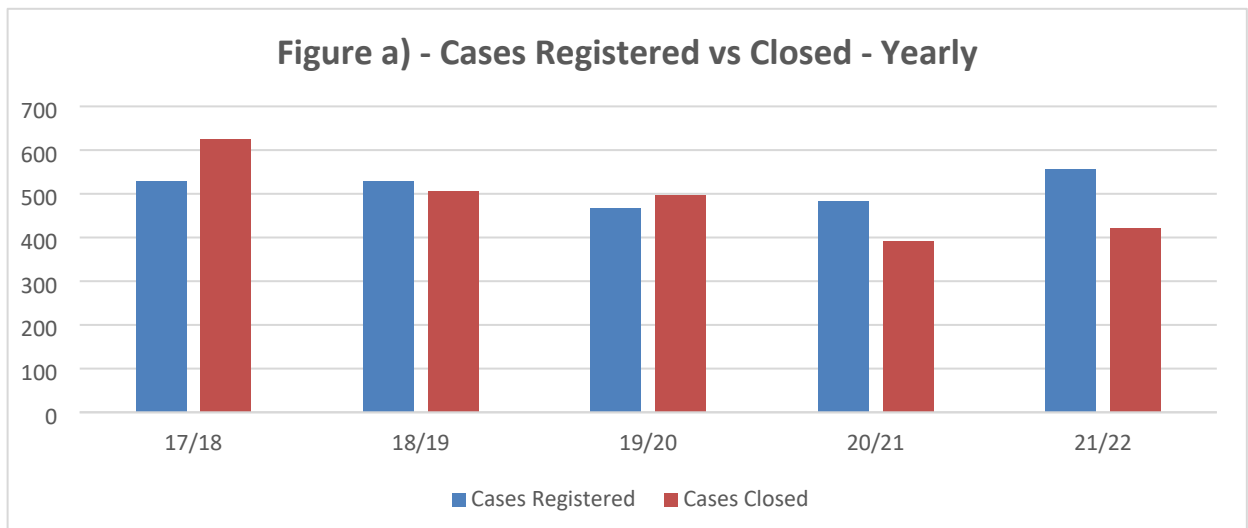
2.3 The Planning Enforcement team are funded by income from planning applications and do not generate any additional income as part of the function. When an enforcement investigation results in a retrospective planning application the relevant fee received would be used for the determination of that application. The team resource currently consists of 1x team leader and 2.5 x officers. Reports that come into the team are triaged by the team leader. Where a report details a potential breach of planning control a case is registered and allocated to an enforcement officer for investigation. If the report is clearly not a matter for consideration as a breach of planning control, then the reporter is advised accordingly. The enforcement officers carry out a review of any history of the site or property of where the alleged breach has taken place along with any information provided in the initial report. Officers usually also carry out a site visit to better determine the situation and to consider any surrounding influences that might be relevant to the case. If it is established that a breach of planning control exists officers will try to negotiate with the transgressor to resolve the situation, i.e., to remove the or stop the breach as appropriate. If this is unsuccessful then the officer will with the team leader,

consider taking more formal action which may ultimately result in a legal notice served. It is incumbent on the officer to try to negotiate and work with a transgressor before moving to any formal course of action.

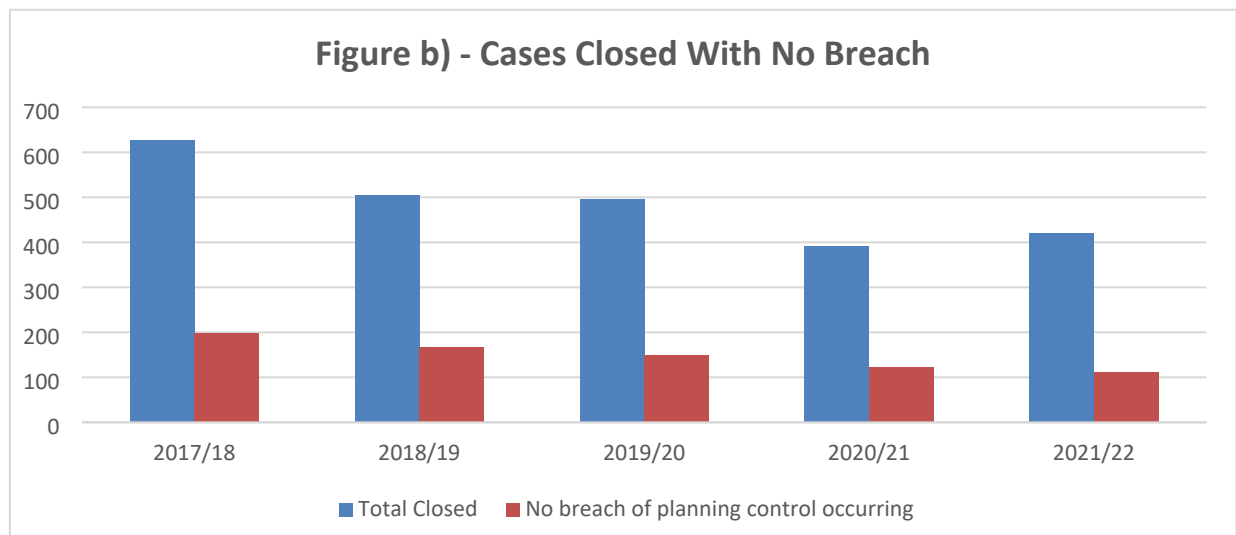
3. Performance data

3.1 Data has been provided to set out how the team has performed in a number of key areas. Graphs are based on the past five financial years.

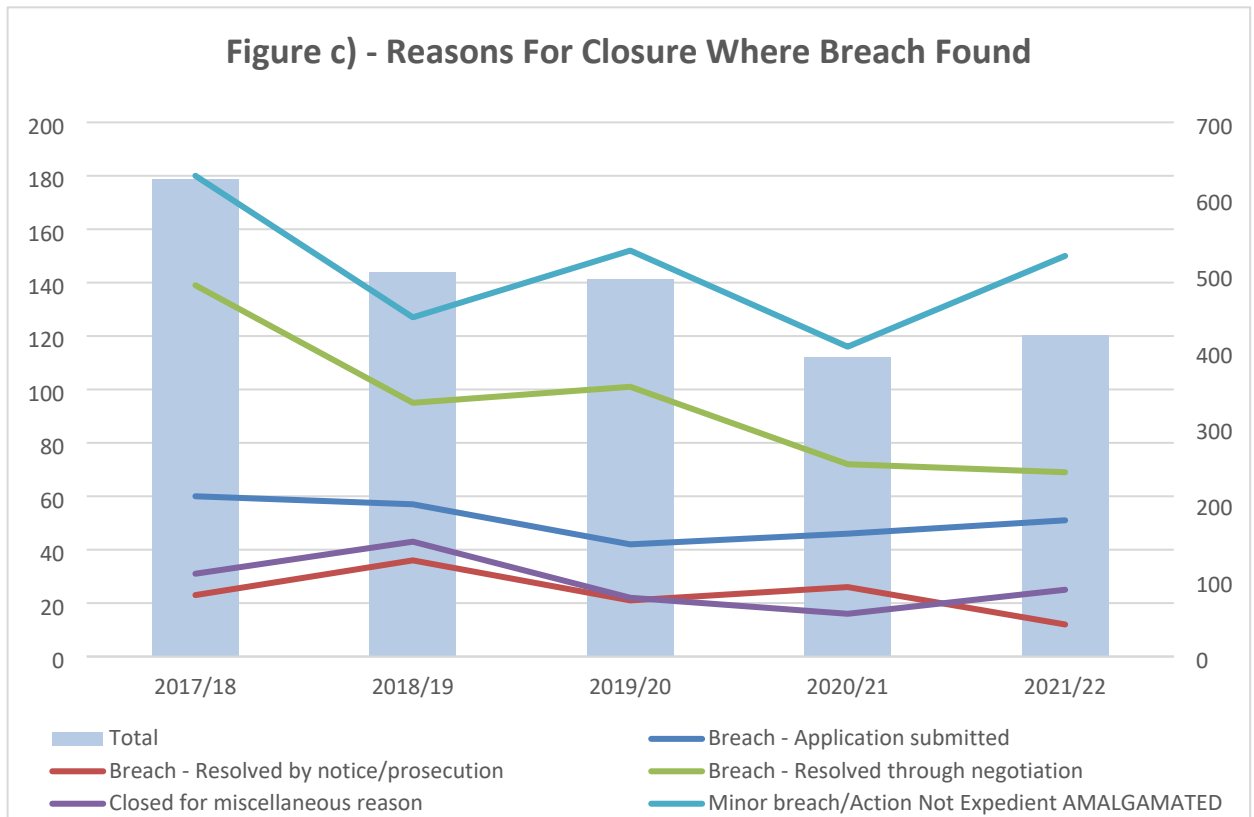
3.2 Figure a) – *Cases Registered vs Cases closed.* This graph shows the number of cases that have been registered (shown in blue) This figure includes only cases registered. It does not include cases that were triaged by the team leader on initial receipt and were deemed not to require investigation. The red bar indicates how many registered cases were closed for the same period.



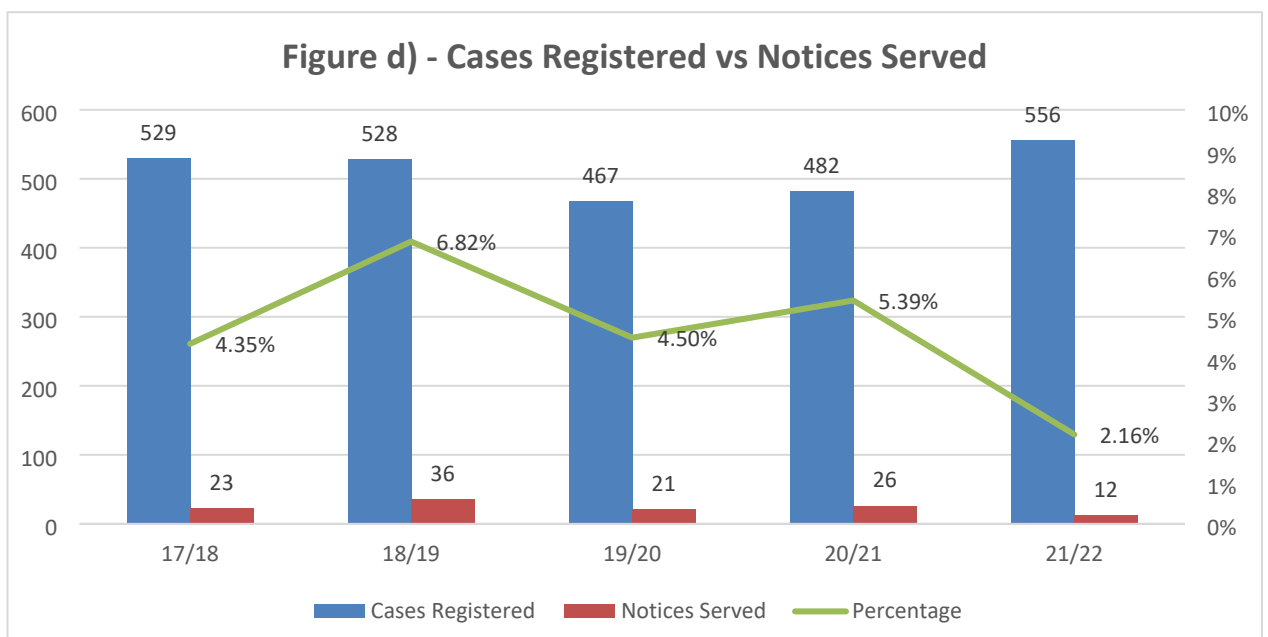
3.3 Figure b) – *Cases closed no breach* shows the total number of cases closed in blue over the same period as above; with the red bar showing the number of those cases that were found to have no breach occurring.



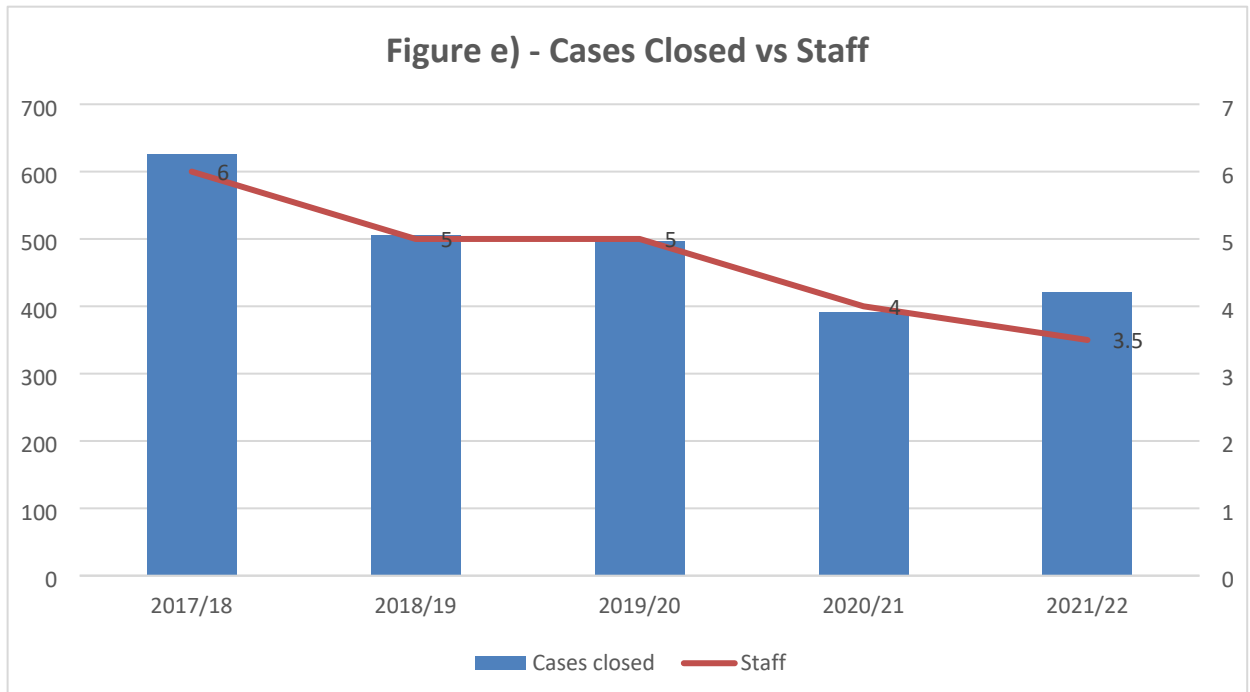
3.4 Figure c) - shows the outcome of cases that have had a breach identified. The chart indicates the total cases closed over overlaid with the reasons for closure.



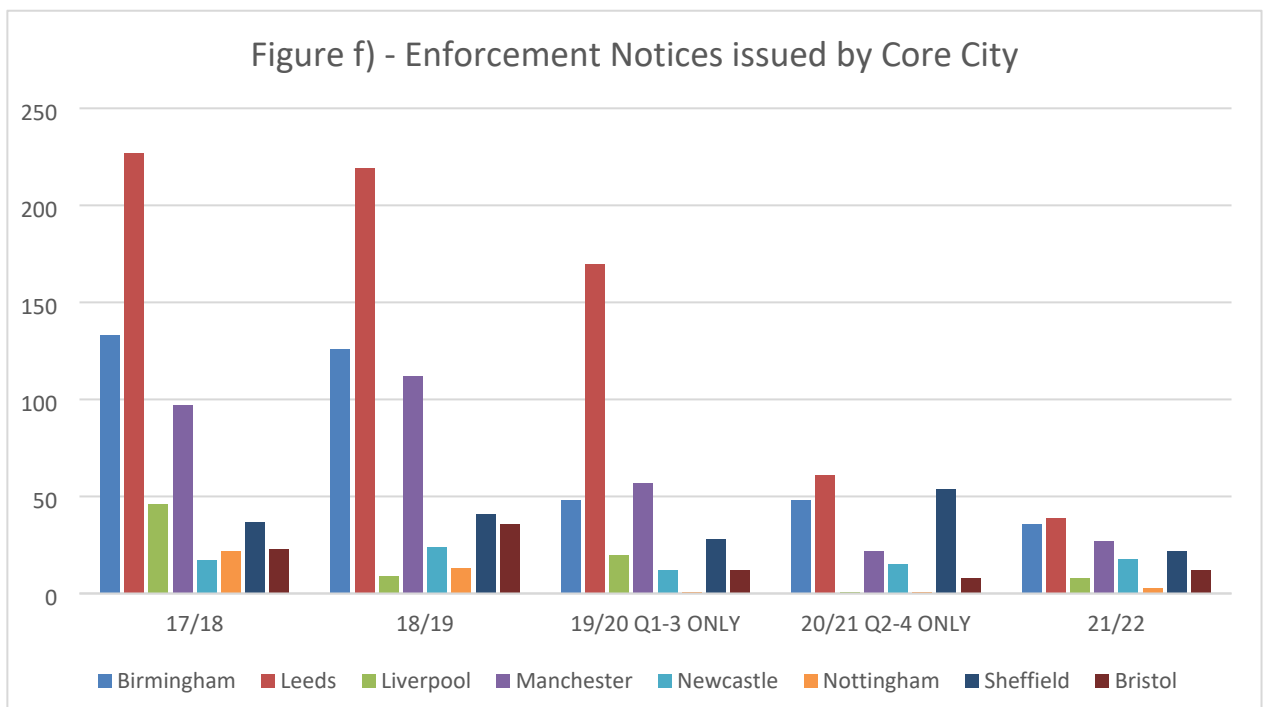
3.5 Figure d) - Shows cases registered which have resulted in the legal serving of a notice



3.6 Figure e) - shows the number of cases closed and the staff resource within the Planning enforcement team over that same period.



3.7 Figure f) - Shows a comparison with other core cities. The data available is incomplete from other cities so where data is omitted it indicates that the relevant LA did not post their results for that period.



3.8 Commentary

The data above shows that cases registered for investigation have increased in the past three years having dropped initially from the previous two years. Cases closed by offices has declined across four of the five previous years with an uptick in the last year. This is linked in part to the staff resource within the team which has also been reduced over the past 5 years. The Covid pandemic has also hampered the investigation process where restrictions introduced difficulties in gaining access to certain sites to carry out an investigation for a considerable period of time. An additional resource has been seconded into the team to work on a specific task of Houses in Multiple Occupation (HMO) work. Details of this project can be found in the appendices case study.

4 Policy

As noted above the NPPF recommends that the Local planning authority should publish a Local Enforcement plan which sets out how it delivers its Planning Enforcement function.

The current enforcement plan can be found as appendix C. The plan was last refreshed in April of 2017.

5. Consultation

a) Internal

Not applicable

b) External

Not applicable

6. Public Sector Equality Duties

- 6a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic

that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

- 6b) The public sector equality duty is taken into account when a decision is made regarding the taking of formal action or an alternative course of action when a breach of planning control has occurred. In addition to this when the Local Enforcement Plan is reviewed in future this will be the subject of a equalities assessment.

7.0 Appendices:

A: Case Study – HMO Project

B: Case Study - Glenfrome Road

C: Copy of the Local Enforcement Team plan

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: *None*

Appendix A Case study - HMO project

An example of a specific area of work of the planning enforcement team over the last year is the HMO project which was set up in early December 2021 to process and determine a number of cases that had been registered concerning allegations of properties being used as small HMOs without planning permission. The cases are city wide in terms of their locations, but predominately within the Cotham ward. The delays largely resulted from the need to direct staff resource to other functions during the pandemic and it is recognised that following a Local Government Ombudsman enquiry the matter is now subject to consideration by the Growth and Regeneration Scrutiny Commission.

In December 2021 a member of the wider Development Management Team was seconded into the Planning Enforcement Team initially for 6 months to work specifically on the project but also to spend some time on other planning enforcement cases. The cases concern properties where a specific complaint has been received that the properties are being occupied as a small houses in multiple occupation (HMO) [planning use Class C4] without planning permission (a couple of cases concern the class of large HMO). 52 cases were identified with the oldest having been registered on 15.5.20 and the newest on 27.1.22. The ward breakdown of cases is below.

Avonmouth & Lawrence Weston	1
Bishopston & Ashely Down	1
Clifton	1
Clifton Down	3
Cotham	43
Horfield	1
Knowle	1
Southville	1

A spreadsheet was drawn up which enables us to provide a consistent approach on how the cases are being investigated and determined. One key desk based assessment was to establish if a HMO licence was in place under the Housing Act. Input and guidance on process was sought from managers from the Development Management Team and consultation has occurred with the Specialist Planning Policy Officer who prepared the Supplementary Planning Document on HMOs. A meeting was also held with the managers of the Private Sector Housing Team (who administer HMO licences) and they will be appraised of the outcomes of the project and we are working with them in a collaborative way.

It should be noted that the Council's role under the two areas of legislation (Housing and Planning) are separate and distinct but a joined up approach and information sharing aids the Council's administration of both regimes. The 52 cases were initially broken down into 4 batches, with the first batch being the properties where no HMO licence was in place. Work on the project has been underway for 10 months and all 52 cases have now been subject to investigation. At the time of producing this report: -

- 15 cases have been closed – where no breach of planning control has been found - for instance the properties were not in use as a C4 or have been in C4 use for a period longer than 10 years (thus being immune from action) – or where the property owner has volunteered to cease the C4 use.
- 37 cases are still pending consideration – One formal planning enforcement notice has been served and we have identified at the moment between 5 and 10 cases where we intend to serve a planning enforcement notice with instruction paperwork for legal being prepared. There have also been

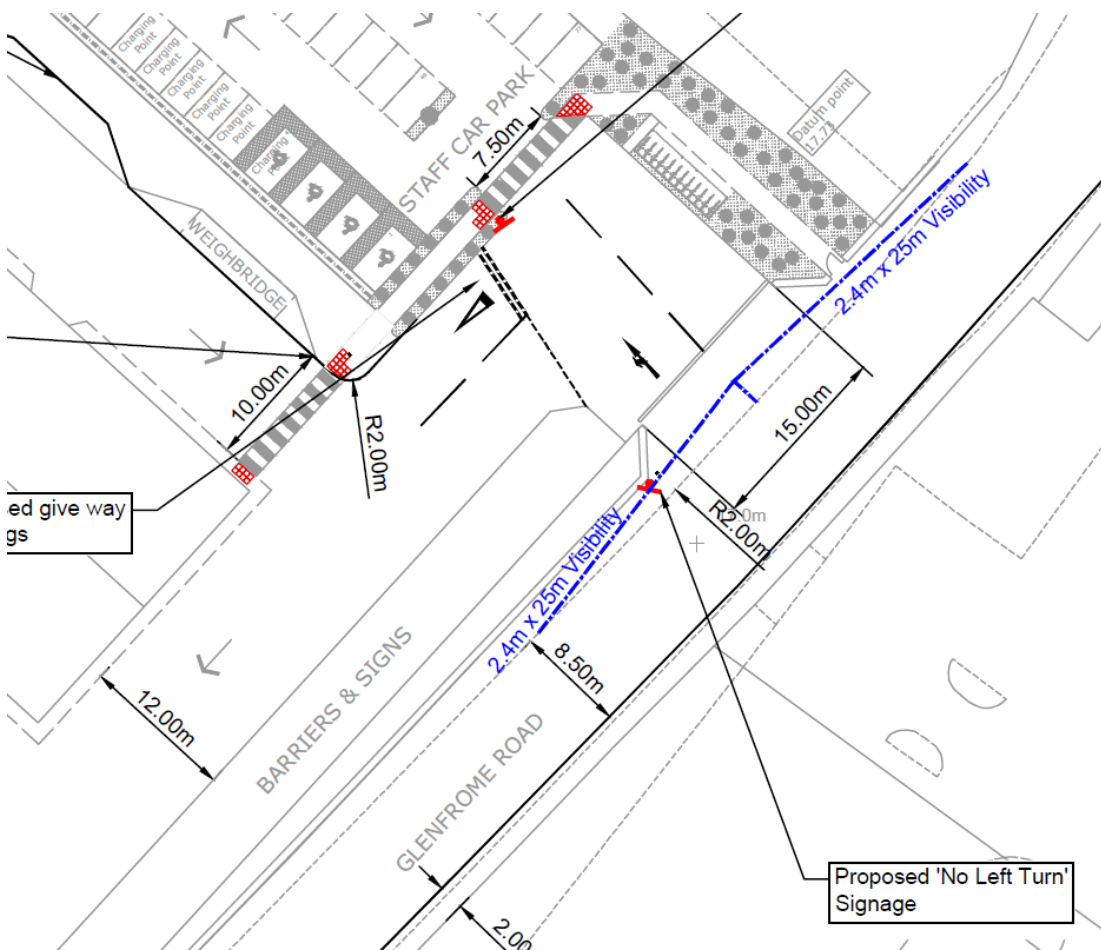
approximately 5 applications received to formalise the use of the property. This leaves approximately 25 cases where the investigation is ongoing.

We have been updating the complainants (residents who reported the cases) as we progress each case and we expect to have concluded the investigations and agreed actions in respect of all cases by the end of this calendar year. The secondment of the planning officer working on this project has been extended.

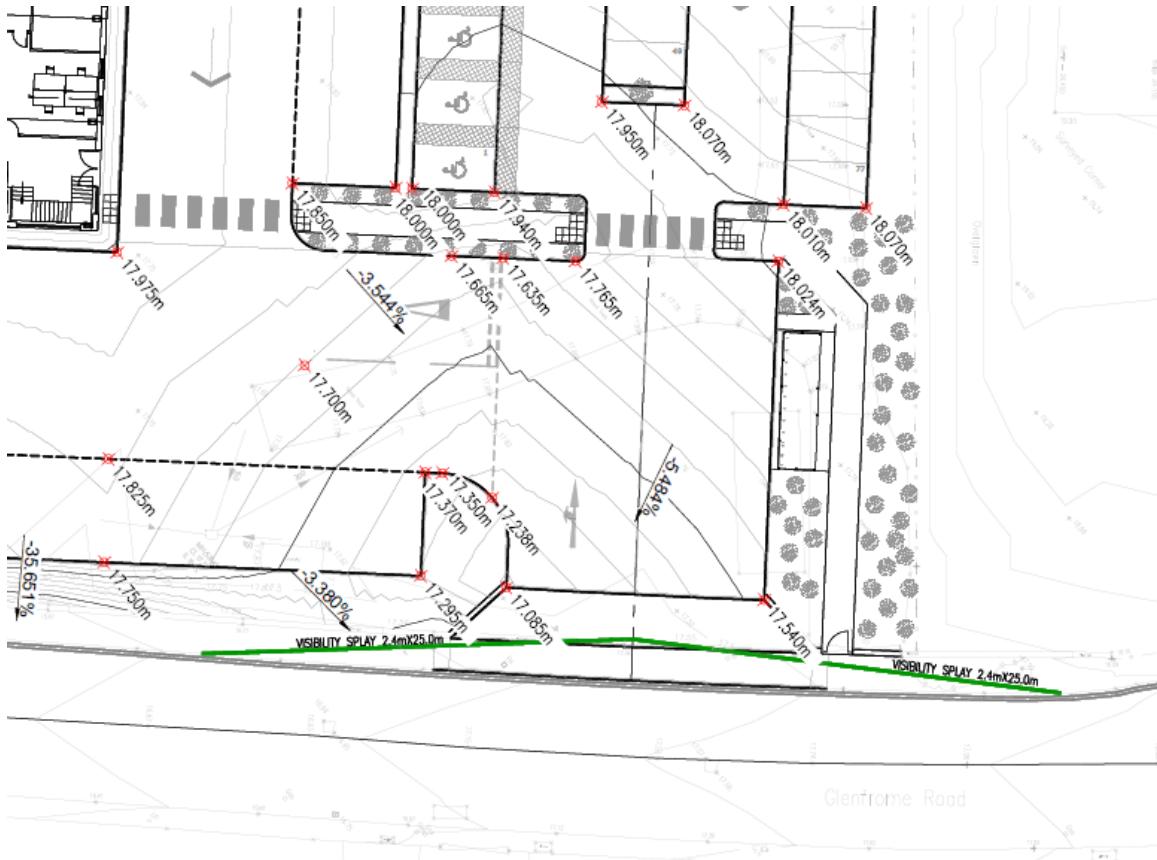
Appendix B – Case study Glenfrome Road

Planning permission reference 19/04802/F was granted on 26th April 2022. It approved a new unit Class E (Office/light Industrial), and Class B8 (storage/distribution) with associated access, parking and landscaping, subject to 44 planning conditions.

This note has been prepared to review the construction of the site entrance. The layout approved is as illustrated on Plan 194715 – A02 rev A (extract below)



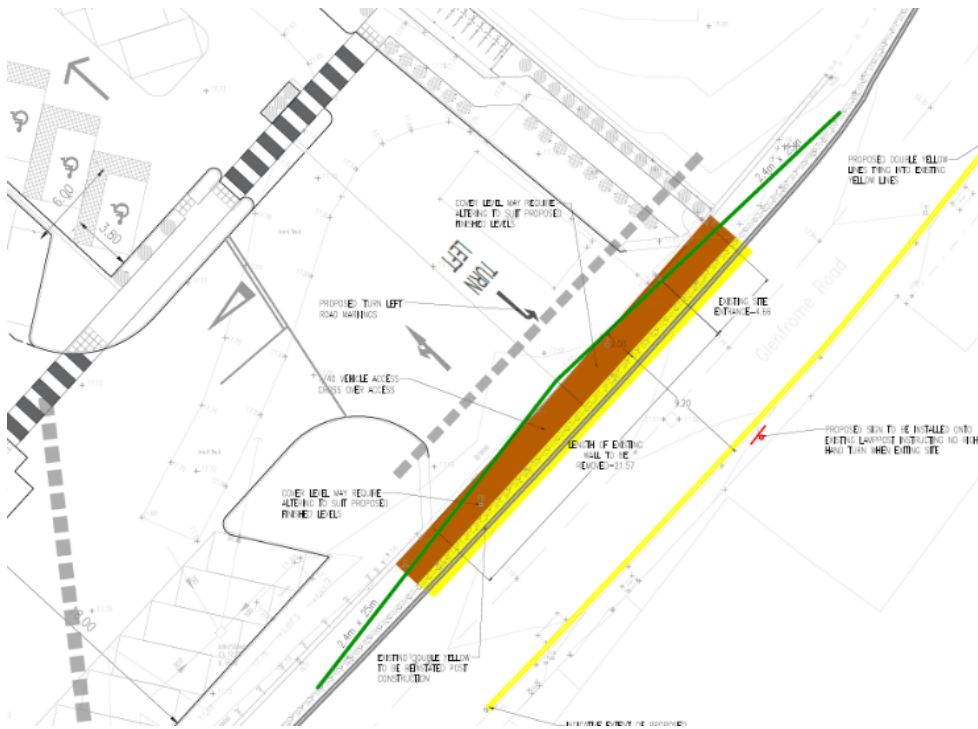
On 18th May 2021 a submission was made reference 21/02781/COND – to seek approval for 17 conditions. This includes condition 4 which deals with the requirement to approve highway works. The plan of the entrance as provided as part of that submission is below.



It can be noted that any works to Highway land also needs to be subject to a Section 278 agreement under the Highway Act. (Advice Note 2 of the planning permission advises a developer of this requirement.) On 10th August 2022 one of the Ward Councillors contacted the planning enforcement team and the Councillor was referred to the case officer dealing with the outstanding planning matters. Subsequent to that the planning department were advised by the highways team that:

“The original [s278] proposal does show an island at the vehicle exit but this was amended and was changed to a vehicle crossover and as such, the tactile paving was not required as the footway in this instance, is continuous and puts the priority on the pedestrian and not the vehicle. I can confirm that I have been in direct contact with the developer and that these works have been carried out as per the signed Technical Agreement. The only outstanding works that need to be completed at this point are upgrades to 3no lighting columns as well as a newly installed No Right Turn sign on the lighting column opposite the vehicle exit. Once these works are complete I will be requesting an RSA 3 to be carried out in to ensure that these works are safe.”

The layout of the access approved by the highway department under the relevant section of the Highways Act is shown below.



The actions for the planning department now are to ensure that the condition discharge matters for condition 4 accord with these details (as agreed by highways above). Overall, based on the photograph provided (below), the design of the entrance has changed slightly when compared with the approved documents, in that an additional curved radius kerb line has been installed that was not shown on the layout plans above. The scheme though has not been significantly varied from the one approved at planning stage and has been subject to a detailed approval process with highway officers, who would advise on the discharge of the planning condition.



Appendix C Copy of Bristol Local Enforcement Plan is a document attached with this submission.