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SUPPLEMENTARY AGENDA

Dear Councillor

PLANNING AND LICENSING COMMITTEE - WEDNESDAY, 14TH OCTOBER, 2020

I am now able to enclose, for consideration at next Wednesday, 14th October, 2020 meeting of the Planning and Licensing Committee, the following reports that were unavailable when the agenda was printed.

Agenda No	Item
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| 4. | <u>Telecommunications Update</u> (Pages 3 - 8) |
| 5. | <u>Planning and Enforcement Appeals Updates</u> (Pages 9 - 18) |

Yours sincerely

Chief Executive

Encs

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Agenda Item 4

Committee: Planning and Licensing Committee	Date: 14 October 2020
Subject: Telecommunications Update	Wards Affected: Brentwood South, Brentwood West, and Warley
Report of: Phil Drane, Director of Planning and Economy	Public
Report Author: Name: Mike Ovenden, Associate Consultant Planner Tel: 01277 312500 E-mail: mike.ovenden@brentwood.gov.uk	For Information

Summary

On 2 September 2020, the Planning and Licencing Committee requested a report for information at its October meeting setting out the responsibilities of the Mobile Network Operators and a Local Planning Authority in the provision and maintenance of telecommunications networks. This report sets out those responsibilities.

Main Report

Introduction and Background

1. Councillors will be aware of current mobile telecommunication network capacity issues in the area around Brentwood railway station. Until recently, the four national mobile network operators - Vodafone, O2, EE and Three, and in turn the smaller providers that also use their networks - all used Ewing House (Kings Road, Brentwood) as a base station to provide 2G, 3G and 4G network coverage for the station area. As part of the redevelopment of that building, all operators were served a Notice to Quit (NTQ) by the owner requiring the removal of all equipment by the end of June 2020.
2. It is understood that the base station equipment has now been switched off and removed and in the absence of a suitable site(s) to install replacement equipment, customers are experiencing a degradation in service. Some users have criticised the Council for the situation. However, local planning authorities and mobile network operators each have responsibilities in the provision and maintenance of telecommunications networks. Local planning authorities and network operators are required to work within the planning system. Network operators also need to fulfil the requirements of their licences. There are best practice documents produced and supported by mobile network operators and local planning authorities that encourage collaboration and cooperation between the sectors. In addition, operators are required to work together, for example by sharing sites and masts where possible.

3. To help the expansion of mobile phone networks, successive governments have created an evolving system of permitted development rights, a form of national planning permission. As a result, mobile network operators can replace, upgrade or expand their networks with limited involvement of local planning authorities. The permitted development system as it relates to telecommunications masts etc operates as a hybrid system - it avoids the need for full planning permission but requires developers to apply to the local authority to establish two matters - whether details of siting and appearance need to be agreed, and if so whether the details submitted are acceptable.
4. Permitted development rights recognise that there may be situations where the network operator and planning authority cannot agree on a proposal, or issues arise at short notice, and so to avoid a disruption to service the mobile network operators can install emergency equipment without any need for agreement from the local planning authority. That equipment can remain in place for up to 18 months.

Issue

5. This section sets out the responsibilities of the mobile network operators and those of the local planning authority.

Responsibilities of the Mobile Network Operators

6. Mobile Network Operators (MNOs) are required under their licences, granted under the Telecommunications Act 1984 (as amended), to provide 'good coverage' to 95% of the UK population by 2022. Good coverage is defined by Ofcom as a signal strength at which nearly all 90-second telephone calls are very likely to complete without interruption; and nearly all 4G connections will deliver a connection speed of at least 2 Mbit/s. This is fast enough to browse the internet and watch glitch-free mobile video. In addition, the Government requires the majority of the population to have access to 5G networks by 2027.
7. When a mobile network operator wishes to install equipment such as new masts or other apparatus it must first apply to the local planning authority to establish whether prior approval is required of the siting and appearance of the development. It cannot proceed with the development until the local planning authority has responded that prior approval is not required, that prior approval is given or the period for determining the application has expired.
8. It is understood that the notice to quit Ewing House was served on the MNOs on or before October 2018. Once the operators were made aware of the need to find an alternative site for a base station there would have been considerable

technical work involved in formulating a development proposal. This includes identifying network requirements, potential options, suitability of other parts of the network to alterations, and meeting legal and license requirements. The nature of the preparatory work involved appears to be the reason why some of the applications were made so close to the run-up to the June 2020 decommissioning of Ewing House.

9. However, irrespective of time pressures or the level of confidence or expectation the MNOs may have had about the acceptability of their proposals, it is also not clear why the mobile network operators did not programme the installation of the emergency equipment in good time for the end of June 2020 switch-off deadline as a safety net to avoid a degraded service. Provision of the emergency equipment should have avoided the break in service.

Responsibilities of the Local Planning Authority

10. Local planning authorities are required to respond to telecommunication permitted development prior notification applications in a timely manner and only consider matters of siting and appearance. No other matters can be considered in these applications, whatever their merits, even if raised by third parties. Brentwood Borough Council, as planning authority, met these requirements when dealing with the recent cases.
11. Deciding applications for prior notifications involves some degree of judgement. When making these judgements the local planning authority bears in mind the very great social and economic benefits these networks bring to individuals, businesses and other organisations. Events in 2020 have reaffirmed the benefits of these networks. Effectively these applications require authorities to request details for prior approval only when necessary and when considering those details balance any visual harm of the siting and appearance on the one hand with the benefits of maintaining or enhancing the telecommunications network on the other. On some occasions the benefits will outweigh the harm, in other cases the opposite will be the case. In determining the recent cases, the planning authority reached the view that the harm of the siting and appearance was not outweighed by the benefits.
12. Best practice encourages pre application discussions and both parties to fully engage in pre application discussions as well as discussing outstanding matters during the life of the applications. Unfortunately, it was not possible to reach agreement and support the proposals even considering the benefits such networks bring.
13. The Borough Council has other responsibilities, including those relating to ownership of land and buildings involved in some of the sites subject to recent

unsuccessful applications but these responsibilities are outside the planning system and therefore have played no part in planning decisions and are not covered in this report.

Further discussions

14. Officers and representatives of Mobile Broadband Network Ltd/MBNL (EE and Three) have met to discuss the issues and it is hoped that a satisfactory alternative proposal can be agreed. Cornerstone (Vodafone and O2) has appealed the refusals on their applications to the Planning Inspectorate. The outcome of the appeal is unlikely to be known for some time but will either result in the equipment being able to be carried out as applied for or require the companies to develop new proposals to address the lack of network service in the area. To date no firm information has been received from either network group regarding the timing of any installation of emergency equipment to restore network capacity.

Consultation

15. None

References to Corporate Strategy

16. The Council's Corporate Strategy "Brentwood 2025" identifies five key priorities. Two are of particular importance in this matter; *Growing the Economy* and *Protecting the Environment*. An element of Growing the Economy is enabling the growth of existing business and one example is to "Support the roll out and take up of new technologies, such as superfast broadband and 5G". The provision and enhancement of telecommunications networks is an example of a tension in achieving different corporate priorities. Officers have approached discussions on these developments to try and achieve both objectives.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Director of Corporate Resources
Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk

17. There are no direct financial implications included within this report.

Legal Implications

Name & Title: Amanda Julian, Director of Law & Governance
Tel & Email: 01277 312705/amanda.julian@brentwood.gov.uk

18. There are no legal implications beyond the statutory requirements of the local planning authority set out within this report.

Economic Implications

Name/Title: Phil Drane, Director of Planning and Economy

Tel/Email: 01277 312610/philip.drane@brentwood.gov.uk

19. Telecoms coverage, providing phone signal and data capability, is an important enabler of economic growth. At this time of difficulty through the COVID-19 pandemic, the local economy is even more dependent on mobile phone networks. It is important that the Council does what it can to support the telecoms industry alongside its requirements as local planning authority.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager

Tel/Email: 01277 312634/kim.anderson@brentwood.gov.uk

20. There are no equality and diversity implications.

Health & Wellbeing Implications

Name/Title: Kimberley White, Corporate Health & Wellbeing Officer

Tel/Email: 01277 312688/kimberley.white@brentwood.gov.uk

21. Maintaining good mobile phone network coverage is an important contributor to personal health and wellbeing, particularly during times where physical social contact is less possible due to the COVID-19 pandemic.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

22. Telecoms equipment, whether permanent or temporary, may involve use of Council assets. Where appropriate, the Council's Asset Team is involved in discussions.

Background Papers

- Item 460 – 20/00531/PNTEL – Masefield Court, Victoria Road, Brentwood, CM14 4EF – Planning and Licensing Committee, 8 July 2020

Appendices to this report

None

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Committee: Planning and Licensing Committee	Date: 14 October 2020
Subject: Planning Enforcement Activity Overview	Wards Affected: All
Report of: Phil Drane, Director of Planning and Economy	Public
Report Author: Name: Caroline McCaffrey, Development Management Team Leader Telephone: 01277 312500 E-mail: caroline.mccaffrey@brentwood.gov.uk	For Information

Summary

This report summarises the Planning Enforcement activity undertaken in the Borough for the period between 1 July and 30 September 2020 (Quarter 2). Regular updates are to be brought to the committee to monitor the performance of the wider Planning service.

Main Report

Introduction and Background

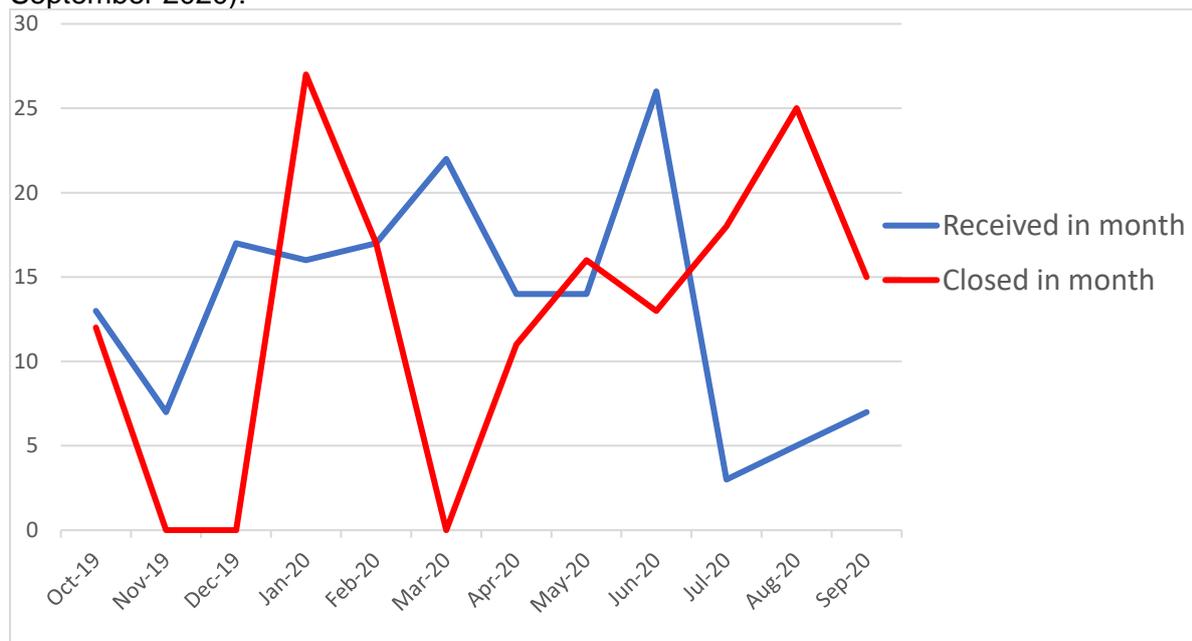
1. The purpose of this report is to provide the Planning and Licencing Committee with an overview of the Planning Enforcement activity in the period July to September 2020 (Quarter 2).
2. The Council has a duty to investigate complaints about development, including building and engineering works and changes of use that may have been carried out without permission or consent.
3. Effective Planning Enforcement is a useful tool in tackling breaches that would otherwise have had an unacceptable impact on amenity in the Borough and to help maintain the integrity of the Development Management process.
4. There are a range of enforcement powers available to the Council. However, whether the Council takes any enforcement action is a discretionary matter. When considering taking any formal action the Council must consider if it is expedient to do so having had regard to the Development Plan, and any other material considerations including the Enforcement Plan. It is also necessary to weigh up whether taking enforcement action is in the public interest.
5. Taking formal enforcement action should be regarded as a last resort and many breaches of planning control can be resolved without formal action being taken. For example, retrospective planning permission can be obtained, or the breach ceases, or is remedied through negotiation.

6. Often the Council receives complaints regarding alleged breaches of planning control that involve other services within the Council or other organisations. Where this happens, the Planning Enforcement Team will work with other officers or organisations such as the Corporate Enforcement Team and neighbouring local planning authorities.
7. Ward Councillors are often the public face of the Council, and so Member involvement in planning matters is crucial to maintain an effective Planning Enforcement service. Therefore, this report has been prepared to provide an overview of the Planning Enforcement function between July and September 2020 (Quarter 2). Whilst serving Enforcement Notices can be high profile, the amount of work involved where informal action is taken and results in a breach ceasing or being regularised is often overlooked. It is important that Members understand the overall number of service requests and consequent workload that the service deals with.
8. Regular quarterly reports will be brought to the Planning and Licencing Committee, which will compare workload over previous quarters.

New Planning Enforcement Cases

9. Figure 1 shows the number of Planning Enforcement cases that have been opened and closed in Quarter 2. Figure 1 also gives a wider view of the number of cases opened and closed since 1 October 2019, showing trends over a 12-month period.

FIGURE 1: Number of Planning Enforcement cases opened and closed (October 2019 – September 2020):

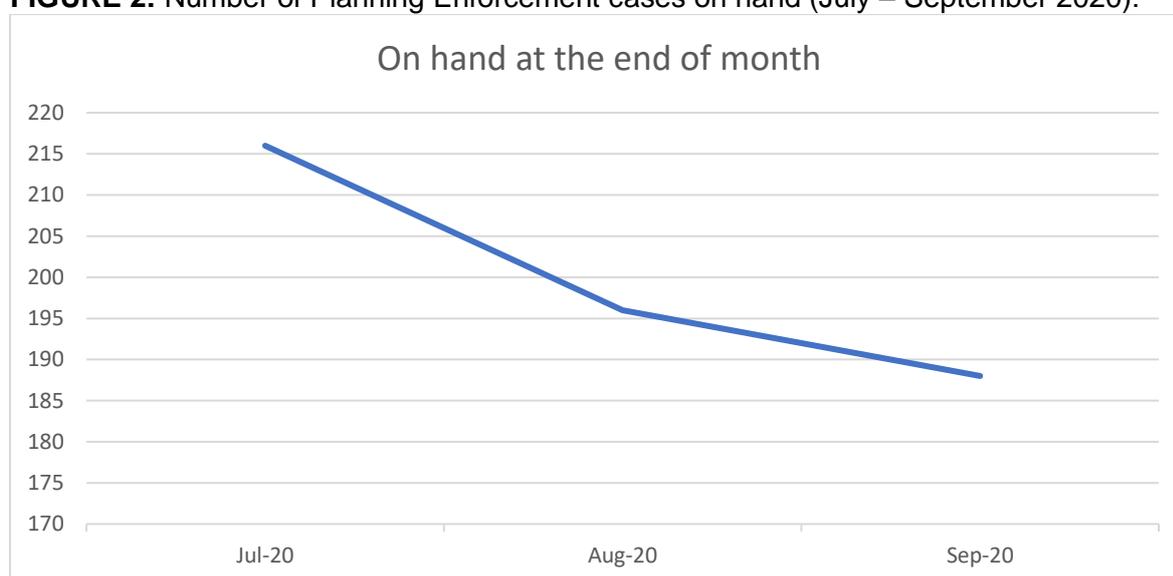


Cases opened Q2:	15
Cases closed Q2:	58
Total cases opened in 12 months:	161
Total cases closed in 12 months:	154

Planning Enforcement Cases on Hand for Investigation

10. Figure 2 shows the total number of enforcement cases on hand over Quarter 2. The total number of cases on hand is 188 as recorded at the end of this period. This is a decrease of 28 in the period.

FIGURE 2: Number of Planning Enforcement cases on hand (July – September 2020):



Enforcement Notices served

11. As noted above, the aim of the Planning Enforcement service is to resolve unauthorised development or uses of land primarily through negotiation without using formal enforcement powers as recommended by government through planning practice guidance.
12. In cases where negotiations cannot achieve a resolution, the Council has given delegated authority to relevant officers to exercise many of the legislative powers to resolve breaches of planning control.
13. Any notice has a period for compliance which will vary depending on the nature of the breach and the steps required to remedy the situation. After the compliance period the Planning Enforcement Team will visit to check whether the notice has been complied with. Failure to comply with the requirements of a notice may result in the Council seeking to prosecute.

14. Appendix A shows the current stage the Council is at following the serving of Enforcement Notices. Five Enforcement Notices have been served in the previous 12 month period and two within the Quarter 2 period of review. Three historic Notices have been complied with within this period. One Notice has not been complied with and constitutes an offence. Four Appeals have been received against an enforcement notice served; one has been allowed with the other three pending determination.
15. There are rights of appeal associated with any Enforcement Notice in the same way that an applicant can appeal against the refusal of a planning application. For example, an appeal against a planning Enforcement Notice (as opposed to a Listed Building Enforcement Notice) can be made based on the following grounds:
 - a) That planning permission ought to be granted or the condition or limitation concerned ought to be discharged;
 - b) The matters stated in the enforcement notice have not occurred;
 - c) The matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control;
 - d) At the date when the notice was issued, no enforcement action could be taken;
 - e) Copies of the enforcement notice were not served in accordance with the relevant statutory requirements;
 - f) The steps required by the notice exceed what is reasonably necessary to either remedy any breach or to remedy any injury to amenity (i.e. the steps are excessive); and/or
 - g) Any period for compliance falls short of what should reasonably be allowed.
16. Where an appeal is lodged, the notice is effectively held in abeyance pending the outcome of the appeal. Unfortunately, the appeals process tends to be slow. For appeals to be heard by written representations the Planning Inspectorate are taking approximately 33 weeks to determine. For public inquiries, this time can and has been significantly longer because of the need to cross examine witnesses and the availability of Inspectors, for example.
17. During the last 12 months, the following notices have been upheld at appeal:
 - a) Springvale Farm, Goatswood Lane, Navestock: Compliance now achieved (unauthorised earth bund/hardcore in Green Belt now removed);
 - b) Oakhurst Farm, Coxtie Green Road, Navestock: Compliance now achieved (unauthorised perimeter wall in Green Belt now removed);
 - c) The Chequers Pub, Chequers Road, Navestock: Compliance now achieved (unauthorised use of site for road haulage trailers in Green Belt now ceased); and

- d) Cherrytrees, Poplar Close, Blackmore: Compliance now achieved (perimeter wall adjacent to Conservation Area now removed).
18. During the last 12 months, one Enforcement Notice was dismissed and permission granted by the appointed Planning Inspector:
- a) Langdon House, Church Street, Blackmore: front wall in Conservation Area allowed by Inspector

Legal Action

19. During the last 12 months three Injunction Orders have been granted to cease unlawful development:
- a) Land adjacent The Spinney, School Road, Kelvedon Hatch: Served on 07/04/2020 (suspected development incursion on Green Belt land);
 - b) Land at Five Acre Farm, Warley Street, Great Warley: Served on 21/05/2020 (unauthorised Gypsy and Traveller site to prevent further breaches on Green Belt land); and
 - c) Land adjacent Elm Farm, Chelmsford Road, Blackmore: Served on 27/07/2020 (suspected development incursion on Green Belt land).
20. During the last 12 months, there have been two successful prosecutions following failure to comply with enforcement notices, both cases pleaded guilty, were fined and costs awarded to the Council, with compliance achieved in one of those cases. One further prosecution is pending for unlawful works to a listed building.

Ongoing Notable Planning Enforcement Cases

21. The following ongoing planning enforcement cases are of note:
- a) Oakwood Nursery, Ongar Road, Pilgrims Hatch: Appeal made by applicant to the Planning Inspectorate against unauthorised dwellings not being built in accordance, appeal dismissed & Enforcement Notice upheld; and
 - b) Twin Oaks, Stock Lane, Ingatestone: Appeal made by applicant to the Planning Inspectorate, Enforcement Notice dismissed and appeal upheld by the Inspector for the construction of an unauthorised dwelling on a Travellers site in the Green Belt).

Planning Enforcement Team Staffing

22. Despite recruitment campaigns the service has been carrying a vacant full time Enforcement Officer post for over two years. In July 2020, two temporary staff (one of which is part time) were employed to cover the vacancy. This has helped to reduce the number of historic cases being investigated by closing

several cases, as reflected in Figure 1. A current recruitment campaign is underway to employ a full-time Enforcement Officer.

Consultation

23. Not applicable

References to Corporate Strategy

24. The Council's Corporate Strategy "Brentwood 2025" identifies the Council's five key priorities. An effective Planning Development Management service, including Planning Enforcement, contributes towards objectives to grow our economy, protect our environment, develop our communities, and improve housing.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Director of Corporate Resources
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25. There are no direct financial implications. Recruitment costs and vacancies are reflected in the Development Management budget. Additional financial cost from enforcement and/or legal action must be met from existing resources. An Earmarked reserve was approved in the 2020/21 budget for enforcement activity, such as unauthorised development or the threat of this.

Legal Implications

Name & Title: Amanda Julian, Director of Law & Governance and Monitoring Officer
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26. The power to issue an Enforcement Notice is discretionary. It should only be used where the Local Planning Authority is satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.

Economic Implications

Name/Title: Phil Drane, Director of Planning and Economy
Tel/Email: 01277 312610/philip.drane@brentwood.gov.uk

27. There are no economic implications arising from this report.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager
Tel/Email: 01277 312634/kim.anderson@brentwood.gov.uk

28. There are no diversity and equality issues arising from this report.

Health & Wellbeing Implications

Name/Title: Kimberley White, Corporate Health & Wellbeing Officer
Tel/Email: 01277 312688/kimberley.white@brentwood.gov.uk

29. There are no health and wellbeing implications arising from this report.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

30. None

Background Papers

- None

Appendices to this report

- Appendix A: Status of Enforcement Notices (January 2020 to present)

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Appendix A: Status of Enforcement Notices (January 2020 to present)

Case No	Address	Breach	Enforcement Action/ Date Notice Served	Compliance Date and status
19/00158/ UNOPDE NOW CLOSED	Langdon House, Church Street, Blackmore, CM4	Unauthorised front wall in Conservation Area	21 January 2020	21 February 2020 Enforcement Notice dismissed at appeal by Planning Inspector
19/00103/ UNOPDE	Five Acre Farm, Warley Street, Great Warley, CM13	Unauthorised change of use of land to residential travellers site	19 February 2020	22 September 2020 Appeal submitted against Enforcement Notice, awaiting Public Inquiry date
16/00080/ UNOPDE	Craigilea, Chivers Road, Stondon Massey, CM15	Unauthorised change of use of land to residential use	18 March 2020	29 October 2020 Appeal submitted against Enforcement Notice, awaiting appeal date
17/00102/ UNLCOU	Land adj, Oakwood, Little Hyde Lane, Ingatstone, CM4	Unauthorised change of use of land to residential curtilage use	15 July 2020	17 November 2020 Appeal submitted against Enforcement Notice, awaiting appeal date
20/00090/ UNOPDE	Land at The Bumbles, Mill Green Road, Mill Green, CM4	Unauthorised development of an outbuilding, being used as residential	15 September 2020	16 January 2021 Still within stipulated compliance period

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