

Report to Planning Committee

Enforcement Reference: 0081/2016

Location: Land to the rear of Cromwell Crescent, Lambley

Breach of Planning Control: Material change of use of agricultural land to a mixed use of agriculture and leisure including the siting of two portable buildings or containers on the land.

Case Officer: Christine James

1 Site Description

- 1.1 This agricultural land lies mostly to the south of the bridleway which leads from Spring Lane, Lambley behind the rear gardens of properties in Cromwell Crescent to Park Lane, Lambley. The bridleway continues through the land with a smaller enclosure of land to the north of the bridleway. Access is gained to the land via the bridleway.
- 1.2 The site is designated as part of the Mature Landscape Area (MLA) which is a local countryside designation seeking to identify and protect those parts of Nottinghamshire's landscape which have been least affected by adverse change. It is also within the Nottinghamshire Green Belt as identified on the Proposals Map of the Gedling Borough Replacement Local Plan.
- 1.3 There are wide views of the land from Spring Lane and the bridlepath as it slopes gently uphill to the south towards Burton Joyce.

2 Relevant History

- 2.1 The land is agricultural land. There is no relevant planning history.

3 Background

- 3.1 In June 2016, it was brought to the Council's attention that the land was being used to keep horses and two temporary buildings or containers had been placed on the land in connection with the equine use.
- 3.2 The site was visited on the 7th September 2016 by an officer representing the Council and a meeting was held at that time with the occupiers of the land who stated that the land was sublet to them by the tenant of the land and they were using the land to keep their horses and the portable buildings had been placed on the land to act as a day room and a storage place for tack

and equine equipment.

- 3.3 An inspection was made of both buildings/containers. Both buildings/containers appeared to be resting on the land without foundations or any attachment to the land and there were no obvious services connected to the buildings such as water or electricity but there appears to be a generator to provide power to the day room.
- 3.4 The building used as the 'day room', measures approximately 9.2m X 3m X 2.46m high. It has a number of windows and has been painted green. Ornamental domestic type plant pots and a bench have been positioned outside the day room and a picnic table and benches have been positioned on the land near to the day room.
- 3.5 An internal inspection of the day room showed it was carpeted and contained a log burner, a settee and some easy chairs and there was a kitchen area with facilities to make refreshments.
- 3.6 The second building or storage container has also been painted green on the front and north side elevation whilst the south side elevation is painted blue and measures approximately 6.15m X 2.5m X 2.5m high. It does not have any windows and is being used for storage of equine equipment and tack.
- 3.7 One of the occupiers stated that she fosters disadvantaged children and she brings the children to the site to help with the horses. The day room is required for the children to have somewhere to sit, relax and have refreshments.
- 3.8 It was explained to the occupiers that planning permission was required for the material change of use of the land from agriculture to a use for leisure including the keeping of horses and for the positioning of the portable buildings or containers on the land. The occupiers stated they would submit a retrospective planning application to regularise the situation but no application has been received.
- 3.9 Letters were sent to one of the occupiers of the land and to the tenant explaining the need for planning permission and advising them of the options available to them; subsequent phone conversations with the occupier and tenant confirmed they had changed their minds and had decided not to submit an application and not to remove the buildings or cease the use, as they believed that the use fell within an agricultural use and planning permission was not therefore required.
- 3.10 On the 1st November 2016 a further inspection of the site showed that the number of horses on the site had increased to eleven and an additional white plastic and wooden structure had been erected between the two portable buildings measuring approximately 2m X 3m and 2.5m high. The structure was supported along the side elevation of the day room; it had a roof and was open to the front and rear.

- 3.11 The additional structure was being used as a shelter for a sit on domestic mower and a generator, an international bulk container (IBC) with a capacity of 1000 litre being used as a water container, ornamental plant pots and chimney pots, domestic plants and planks of wood, badminton rackets and other items.
- 3.12 It was also noted during this visit that additional furniture had been moved into the 'day room' and there were some disassembled horse jumps, a large wooden box which looked like it was being used as a mounting block stored in the open on the land. Post and rail fences topped with barbed wire had been erected to form smaller enclosures to separate some of the horses from each other and there was evidence of some additional feed being brought to the site to supplement the horses grazing. The fences had a number of warning signs on them stating for example "Warning horses bite and kick". In addition there was a small trailer on the site, a second IBC, some yellow plastic chairs and some additional badminton rackets together with other items of a non-agricultural nature.
- 3.13 Later the same day, on the 1st November 2016, the Council served Planning Contravention Notices (PCN) on two of the tenants. A PCN requires the recipient to answer in writing within 21 days a number of questions put to them about the activities taking place on the site.
- 3.14 The tenants confirmed that the buildings/containers had been brought to the site in July 2016. They stated that the buildings/containers had been brought to the land for the '*maintenance of the land and fencing etc*'. and the containers were being used for '*storage of equipment for use on the field to maintain in good agricultural needs and welfare of livestock as farm is a mile away*'.

4 Assessment

- 4.1 Horse related uses have created some contention as to whether they constitute a material change of use from an existing use. It is generally accepted that horses simply grazing on land falls within an agricultural use and does not require planning permission. However, if additional structures or buildings are placed on the land or leisure activities take place associated with the horses which alters the character of the land, planning permission is required. (Sykes v SoS 1981).
- 4.2 In this case two portable buildings or containers and a plastic structure have been erected on the land which are not used for agricultural purposes but instead are used for a broader leisure purpose including the use of one of the buildings as a day room for relaxation and shelter for the occupiers of the land and the children who are fostered by one of the occupiers.
- 4.3 The larger field has been sub divided by post and rail fencing into smaller enclosures to separate some of the horses from each other and warning signage has been attached to the fencing. A number of other items including picnic tables, benches, plastic chairs, sit on mower, badminton

rackets, water containers and plant pots and other items as reported earlier in this report are also stored in the open on the land.

- 4.4 It is considered that the use has changed from an agricultural use to a leisure use including the keeping of horses on the land and as a result the character of the land has been changed and planning permission is required.
- 4.5 Although development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 207) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.
- 4.6 The main considerations in considering whether to take enforcement action in this case is whether the development is acceptable in the Green Belt and on land designated as part of the Mature Landscape Area based on both national and local policies.

Planning considerations

- 4.7 In relation to the development the most relevant paragraphs of the NPPF are paragraphs 79, 89 and 87 which relate to Green Belt and paragraph 64 which relates to design. At the local level, the development plan comprising of the adopted Gedling Borough Aligned Core Strategy (ACS) Policy 3 The Green Belt and Policy 10 Design and Enhancing Local Identity and saved policies within the Gedling Borough Council Replacement Local Plan (Certain Policies Saved) 2014 (RLP): Policy ENV1 Development Criteria; ENV37 Mature Landscape Areas; R10 Equestrian Development are relevant.
- 4.8 There is no specific reference to equestrian uses in the NPPF, although it recognises that appropriate facilities for outdoor sport and recreation is one of the exceptions to the presumption against inappropriate development provided the openness of the Green Belt is preserved and the purposes of including land within a green belt are not undermined.
- 4.9 Paragraph 89 of the NPPF further advises that local planning authorities should regard the construction of new buildings as inappropriate in Green Belt unless they fall into one of the exceptions which includes appropriate facilities for outdoor sport, outdoor recreation on condition that it preserves the openness of the Green Belt.
- 4.10 Although Policy R10 (Equestrian Development), in the RLP also supports the granting of planning permission for equestrian development it is only if the development is in accordance with Green Belt policy and any new buildings in the countryside are small in scale and an essential facility in connection with the outdoor sport or recreation which would not have an

adverse impact on the character and appearance of the surrounding area and would not adversely affect sites of Mature Landscape Areas.

- 4.11 It is therefore generally accepted that horse riding and other equestrian activities are popular forms of recreation in the countryside that can fit in well with farming activities and help to diversify rural economies in the Green Belt providing the openness of the Green Belt is preserved.
- 4.12 Government policy and guidance also advises that good design must be encouraged ensuring development is appropriate to the area. Paragraph 64 of the NPPF states Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 4.13 The NPPF supports local Policy ENV1 of the RLP which requires that development is of a high standard of design and has regard to the appearance of the area and does not adversely affect the area by reasons of its scale, bulk, form layout or materials.
- 4.14 Policy 10 (ACS) also requires that all new development reinforces valued local characteristics and that development should be assessed in terms of its materials and style and the potential impact on important views and vistas. Outside of settlements, new development should protect, conserve and where appropriate enhance landscape character.
- 4.15 The buildings/containers in this case are not considered either essential or appropriate for a leisure or equine use in the Green Belt or area of Mature Landscape. The two buildings are of a metal design rather than a more traditional wooden style which may be acceptable in the Green Belt and Area of Mature Landscape and they are easily visible when looking across the agricultural land from Spring Lane and by anyone using the bridleway leading from Spring Lane to Park Lane, Lambley and although painted green they are an incongruous and alien feature in the countryside and in this area of Mature Landscape. In particular the more recently added additional white plastic and wooden structure attached to the day room is particularly stark when the sun reflects on it and it is viewed across adjacent agricultural fields from Spring Lane.
- 4.16 The use and the buildings/containers, picnic tables, domestic style plant pots and other items left on the open land has degraded the appearance of the landscape and the openness of the countryside. The sub- division of a large field and the subsequent proliferation of associated buildings and structures should be resisted because of the impact this has on the openness of the Green Belt and the character of the countryside. It is considered that the development does not constitute 'an appropriate facility for outdoor sport or recreation' and the use is in conflict and contrary to both national and local plan policies.

Human Rights

- 4.17 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence’.
- 4.18 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice or pursuing formal proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients’ rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place.

Equalities

- 4.19 The Enforcement section operates in accordance with Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate and which are in accordance with the Council’s policy and government legislation.
- 4.20 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council’s published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 4.21 The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 4.22 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal of the two portable buildings/containers and the

plastic and wooden structure and other items stored on the land not usually considered to be ancillary to an agricultural use to prevent the continuing breach of planning control which has occurred on the site.

5 Conclusion

- 5.1 A serious breach of planning control has been identified which harms the openness and the character of the Green Belt and an Area of Mature Landscape.
- 5.2 The breach conflicts with both national and local policies. Negotiations have failed to rectify the breach and failure of the Council to act in these circumstances may undermine the planning system and set a precedent for future unauthorised development in the Green Belt.
- 5.3 The Council should now issue a planning enforcement notice requiring the removal of the unauthorised buildings/containers and other items stored on the land and the cessation of the unauthorised use and if the notice is not complied with formal action should be taken through the courts if necessary.

Recommendation:

That the Service Manager - Development Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and proceedings through the courts in conjunction with the Director of Organisational Development & Democratic Services to ensure the unauthorised buildings/containers and other structures and items not usually considered incidental or ancillary to an agricultural use be removed from the land and the cessation of the unauthorised leisure use of the land.