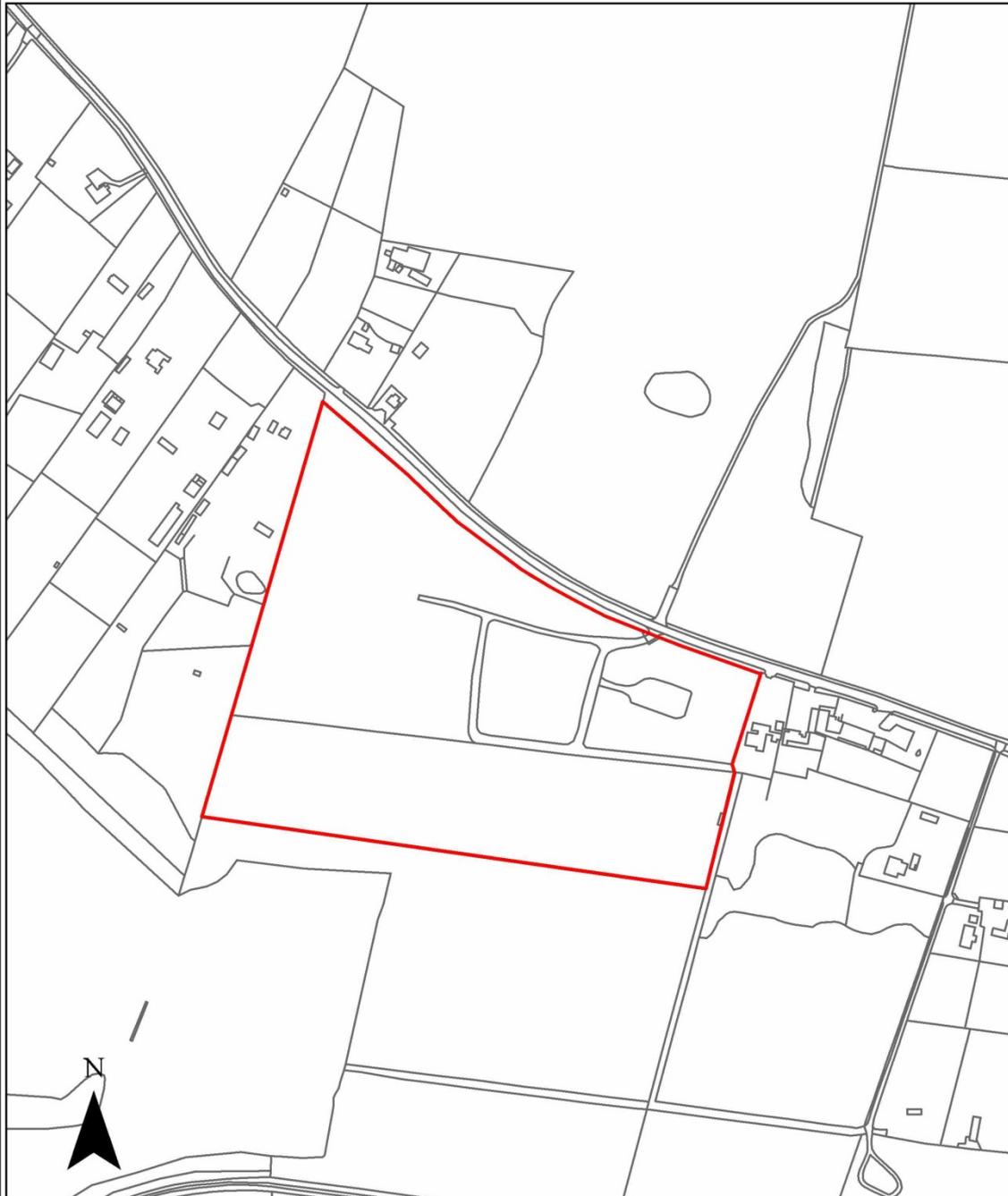


1:4,000

Enforcement Reference: 0110/2017

Location

Woodland to the south of Longdale Lane
Ravenshead



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.
Reproduced with the permission of the Controller of H.M.S.O. Crown Copyright. Licence No LA100021248.
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Report to Planning Committee

Reference:	0110/2017
Location:	Woodland to the south of Longdale Lane, Ravenshead
Breach of Planning:	Unauthorised development, engineering works and tipping

1 Background

- 1.1 This matter relates to unauthorised development, engineering works and tipping on a site of approximately 9.6 hectares of woodland to the south of Longdale Lane, Ravenshead and to the east of Ravenshead Village and approximately 150 metres to the west of Rigg Lane crossroads with Longdale Lane.
- 1.2 The Land lies within an area of countryside and also within the Nottinghamshire Green Belt. In addition it is part of a designated Site of Nature Conservation Interest. The area is extremely rural although at intervals there are some large detached dwellings in generous well screened secluded gardens along the south side of Longdale Lane.
- 1.3 In February 2008 conditional planning permission was granted to the land for the re-establishment of an existing vehicular access into the woodland used for general management works and husbandry (Planning reference 2007/0988).
- 1.4 On 15th June 2010, a Prior Notification application for forestry development was received by the Council from the land owner (Reference 2010/0527). The application was made seeking confirmation that the erection of three forestry buildings would constitute permitted development under the provisions of the Town and Country Planning General Permitted Development Order 1995 (GPDO); Schedule 2, parts 6 & 7; which relates to agriculture and forestry permitted development.
- 1.5 On 7th July 2010, consent was given by the Council under the GPDO for the forestry buildings and the first building was erected in the summer of 2013 but no start was made on the other buildings.
- 1.6 On the 28th February 2017, a pre application enquiry was received for the land from a planning consultant acting on behalf of the owner. (Reference

2017/0462PRE). The enquiry proposed 3 agricultural buildings and a secondary vehicular access into the site.

- 1.7 A response was sent to the applicant on the 20th April 2017 advising the General Permitted Development Order (GPDO) approval given under reference 2010/0527 had lapsed due to the conditions attached to the GPDO which required the development to be “carried out” within a period of 5 years from the date approval was given.
- 1.8 In May 2017 it came to the Council’s attention that despite this advice works had commenced on site to construct the second building. Officers attended at the site and it was noted a water supply had been brought to the development site, cavity wall foundations had been laid and excavation works had been carried out in preparation for a new access from the new building to Longdale Lane. In addition a large amount of hard-core had been tipped on the land to make a hard standing in front of the new building.
- 1.9 On the 26th June 2017, a planning application was received for a change of use of the previously erected existing forestry building to allow it to be converted for 2 holiday lets.
- 1.10 A further visit was carried out to the site by officers on Wednesday 2nd August 2017 when they met the owner and planning consultant who advised officers the existing barn was redundant and they believed they could still build the other two barns under the GPDO consent received in 2010. The planning consultant and the applicant have been advised in writing this is not the case and all work should cease as it is not permitted development and requires planning permission.

2 ASSESSMENT

- 2.1 The 2010 application made under the GPDO proposed each of the three forestry buildings would measure 24.6m in length X 12.6m in depth and a maximum ridge height of 7.3m. It was claimed these buildings were necessary for the forestry business and they would be used for the storage of woodland machinery and logs as part of the woodland management scheme. The applicant claimed there would be up to “200 tonnes of wood stored in each barn at any one time, along with plant and machinery needed for the upkeep and ongoing maintenance of the woodland, i.e. JCB digger, 3 tonne tipper lorry, 2 tonne dumper truck, chipping machine and various chain saws and tree felling equipment”.
- 2.2 The 2010 application made it clear the applicant was requesting a determination by the Council under ‘prior notification’, General Permitted Development Order 1995 (GPDO); The Notice of consent from the Council dated 7th July 2010 also makes it clear that the proposal was considered and

determined under the GPDO. It was also clear from the Council's Notice this was not a free standing planning permission but relied on the terms and conditions of the GPDO.

- 2.4 The first building was erected in the summer of 2013 but no start was made on the other buildings. An aerial photograph taken between June and July 2016 shows no evidence of the foundations to implement the two additional forestry buildings at that time. The works on site must therefore have commenced sometime after July 2016.
- 2.5 The first matter to consider is whether the second and third barn still benefits from the 2010 GPDO prior approval notification and consent. Schedule 2 of the GPDO, Parts 6 & 7 allows certain development to take place on land used for the purposes of forestry, providing it is "reasonably necessary for those purposes" and subject to a number of conditions including that an application is submitted as a 'Prior Notification' and the development is 'carried out' within a period of five years.
- 2.6 The owner of the site has stated the forestry business is very small scale and only employs four people, one day a week between September and March and only two people, one day a week between March and September. In addition, as the owner already has a forestry building on the site which he claims is now redundant and he wishes to convert it for holiday accommodation it is difficult to agree further buildings are 'reasonably necessary' for the forestry purposes of the site and so, the additional barns fail to comply with the requirements of the GPDO on this point.
- 2.7 It is also considered the GPDO approval given in 2010 has lapsed due to the conditions which require the development to be carried out within 5 years from the date the approval was given. The words "carried out" are not specifically defined in the GPDO. However, the Government has distinguished between the requirement to 'commence' development and the requirement to 'carry out' the development. This is demonstrated in that some permitted development rights and all development granted as an express planning permission must be 'commenced' within a specific time period but in situations where Prior notification applications are submitted under parts 6 & 7 of the GPDO 1995 the words 'the development must be carried out' are used.
- 2.8 Where a word is not defined in the legislation or case law then under the ordinary rules of construction the courts would look at the ordinary every day meaning of the word and the words 'carried out' means more than simply commencing the works and is more akin to completing or finishing the works.
- 2.9 A previous appeal case, (Appeal Reference APP/G2245/X/11/2149931 – Sevenoaks District Council – Land at Puckden Wood, Chiddingstone Hoath, Edenbridge, Kent) supports this view when the Inspector determined the

words 'carried out' should be given their "normal meaning" which includes "something that has been done".

- 2.10 Having reviewed the conditions attached to the GPDO it is considered the additional buildings are not necessary for the forestry business and in any case, the consent has lapsed as it is more than 5 years since the consent was granted and the buildings have not been completed ("carried out") within the specified time scale.
- 2.11 As the development fails the conditions of the GPDO the unauthorised works must then be considered against relevant planning policies and whether, if an application is received, is planning permission likely to be granted. The following policies have been considered;
- Gedling Borough Council Replacement Local Plan (Certain Policies Saved 2014) referred to as the GCRP
 - Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan referred to as the ACS
 - National Planning Policy Framework referred to as the NPPF.
- 2.12 The land lies within the Nottinghamshire Green Belt and it is part of a designated Site of Nature Conservation. The main considerations in deciding whether planning permission would be granted and whether to take enforcement action in this case is whether the development is acceptable in the Green Belt and on land which is part of a designated Site of Nature Conservation Interest based on both national and local policies.
- 2.13 Policy ENV1 (Development Criteria) of the Gedling Borough Council Replacement Local Plan (GCRP) (Certain Policies Saved), states:-
- 'Planning permission will be granted for development provided it is in accordance with other Local Plan policies and the proposals meet the following criteria:
- a). it is of a high standard of design which has regard to the appearance of the area and does not adversely affect the area by reason of its scale, bulk, form, layout or materials;
 - b). it would not have a significant adverse effect on the amenities of adjoining development or the locality in general, by reason of the level of activities on the site or the level of traffic generated;
- 2.14 These large and substantial brick and breeze block built structures, new access road and hard standing in the open countryside and Green Belt are out of character with this rural location and appear as an incongruous feature in the Green Belt and are therefore contrary to Policy ENV1.

2.15 Policy ENV36 (Local Nature Conservation Designations) of the Gedling Borough Council Replacement Local Plan (GCRP) (Certain Policies Saved), states:-

“In considering proposals which may have an adverse effect upon a Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC) or a Regionally Important Geological Site (RIGS), the Borough Council will weigh the reason for the proposal against local ecological and community value of the site and the need to maintain biodiversity. In evaluating proposals, consideration will be given to: -

- The impact the long-term ecological viability of the habitat;
- The impact on the public’s enjoyment of the site;
- Measures taken to minimise damage and disturbance to the habitat and wildlife;
- The nature, layout and density of the development proposed.

SINCs will be conserved wherever possible.

Where development is permitted, a balance will be struck between the needs of the development and the ecological interest of the site. Any damage to the ecological interest of the site will, as far as possible, be kept to a minimum. Where appropriate this will require the provision of mitigation and/or compensatory measures which may be secured by conditions and/or planning obligations.

2.16 The Council has not had the opportunity to assess the ecological and community value of the site or the long term ecological viability of habitats on the land and there have been no apparent measures taken to minimise damage and disturbance to the habitat and wildlife. Furthermore, there has been no opportunity for the Council to secure mitigation or compensatory measures by way of condition as no application has been forthcoming. No impact assessment has been made on the SINC and it is clearly being damaged as a result of the building work, excavations and tipping on the site. The development is therefore in conflict with Policy ENV36.

2.17 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.

2.18 The development being carried out on the site is not of an appropriate design for this countryside location and does not improve the character and quality of

the area and the way it functions and therefore the development is clearly in conflict with this advice.

- 2.19 Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policies is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence. Paragraph 87 of the NPPF states that:-

“As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.

Paragraph 88 of the NPPF continues:-

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations”.

Paragraph 89 of the NPPF states: -

“A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- buildings for agriculture and forestry;

- 2.20 As it has been shown the buildings, hard standing and new access road are not necessary for agriculture or forestry and no special circumstances have been provided; it is considered the unauthorised works are contrary to the fundamental aims and principles of the NPPF. In the circumstances it is considered unlikely that planning permission would be granted should an application be received as the development is in clear conflict with both national and local planning policies and is detrimental to the openness and character of the Green Belt.

Human Rights

- 2.21 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’.
- 2.23 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 taking court 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

- 2.24 The Enforcement section operates in accordance with the Council's 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.
- 2.25 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

- 2.26 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.

3 CONCLUSION

- 3.1 No planning permission has been granted for the erection of further buildings, for the new access road or for the hard standing. The Prior Notification consent granted in 2010 under the constraints of the GPDO has now expired and the additional two barns no longer benefit from this consent. In any case it is clear that this small business which only operates one day a week does not require additional buildings and in such circumstances the works taking

place on the site cannot benefit from permitted development rights given by the GPDO.

- 3.2 In addition, the unauthorised works taking place on the land are contrary to both national and local policies. This is a serious breach of planning control which has continued despite advice from the Council that it is unlikely planning permission would be granted for the development.
- 3.3 Planning enforcement action is necessary to rectify the harm caused, preserve the openness of the Green Belt, and ensure the land is returned to its former condition before the unauthorised works took place.

4 RECOMMENDATION

That the Service Manager, Development Services in conjunction with the Director of Organisational Development & Democratic Services be authorised to take all enforcement action required including the service of a Stop Notice and any other enforcement notices and proceedings through the courts, including an application for an injunction if necessary to ensure the unauthorised development and engineering works cease and the unauthorised works are removed and the land is returned to its former condition.