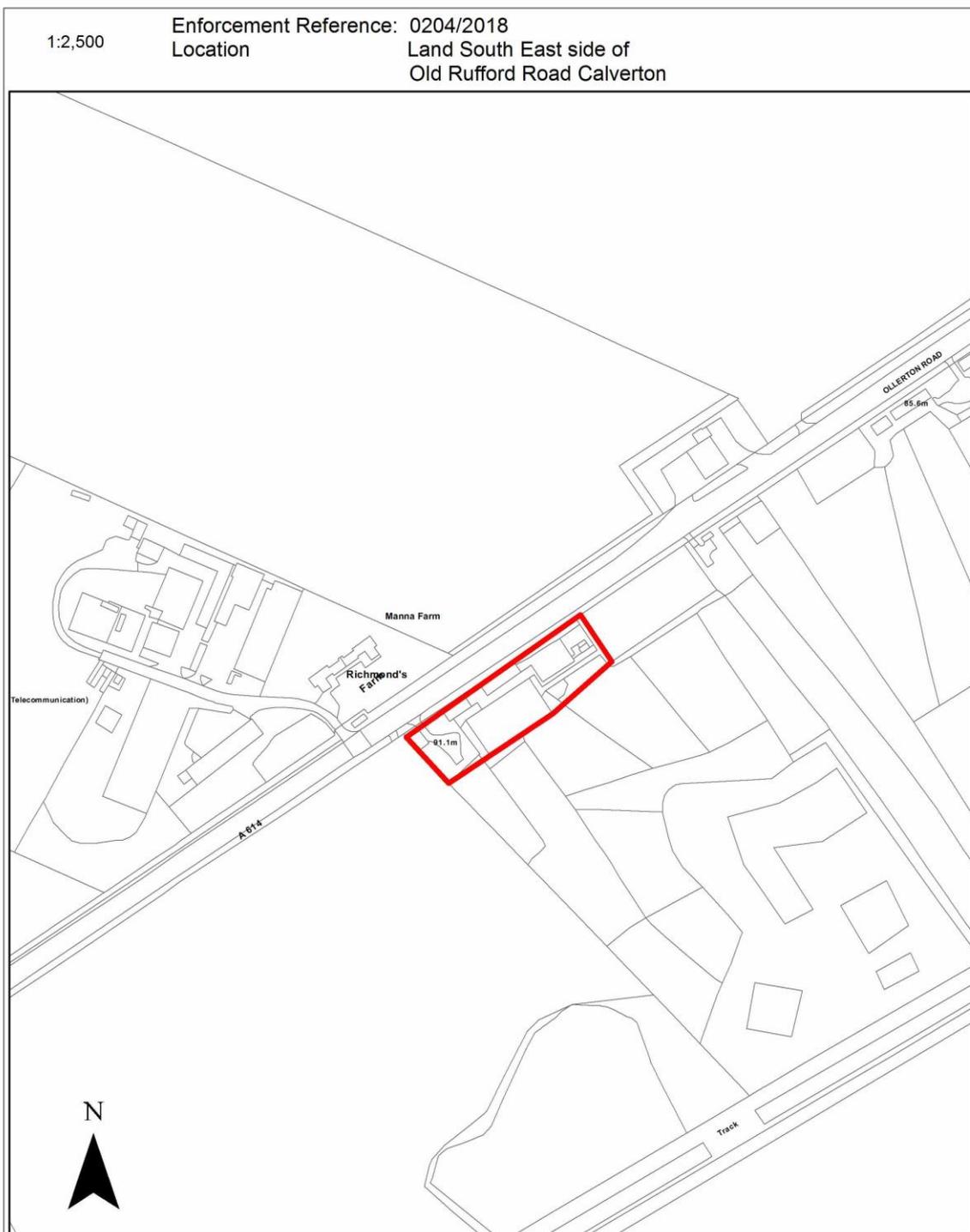


Planning Enforcement Report for 0204/2018



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Report to Planning Committee

Reference Number: 0204/2018

Location: Land to the south of Old Rufford Road (A614)
Calverton and opposite Manna Farm, Calverton

Breach of Planning Control: Material change of use of the land for the stationing or positioning of caravans and the erection of unauthorised buildings and structures.

1 Background

1.1 The agricultural land opposite Manna Farm and to the south of Old Rufford Road (A614) was granted planning permission in 1994 for a change of use of the land for keeping horses and for the erection of a stable and store (Reference 94/1572). Further permission was granted in 1999 for the erection of a stable block (reference 99/0620).

1.2 Conditions attached to both permissions prohibited the erection of jumps, fences or other equipment being placed on the land and also the use of the stables and land for livery or commercial purposes.

1.3 In November 2018, the Council received complaints about the occupation of a static caravan on land to the south of the A614 Old Rufford Road, opposite Manna Farm at Calverton. Officers attended the site and noted that there were three caravans on the land including a large static caravan and a number of other structures including a shed, two dog kennels and a hen coop.

1.4 Contact was made with a tenant who advised the owner was currently abroad and not easily contactable. As a result a Planning Contravention Notice was served on the tenant, which required answers in writing to a number of questions put to the tenant.

1.5 A further site visit was made and an internal inspection made of the three caravans and the other structures on the land. There was nothing in the caravans to suggest they were being used for residential purposes. The tenant explained the caravans all belonged to different tenants but the large static caravan belonged to her. The tenant stated the caravans were all used as shelters and for tea making facilities particularly in poor weather and that they were occasionally used to stay over if any of the horses were ill.

1.6 One of dog kennels on site was being used to house the tenant's own dogs and the second dog kennel was being used to house a large dog of an ex-tenant. It is understood the dog belonging to the second tenant has now been rehoused and the kennel is empty.

1.7 The tenant went on to advise the shed was being used to store personal clothing and effects as due to personal circumstances it was no longer possible to store the items in their own home. The large static caravan was also being used to store additional items and clothing. The tenant advised the hen coop also belonged to her.

2 Assessment

2.1 The main considerations when deciding whether to take enforcement action in this case are;

- i) whether the use of the land for positioning two touring caravans and one static caravan and the construction of a number of buildings or structures is acceptable in the Green Belt and whether the caravans and structures affect the character of the countryside.
- ii) whether the local Planning Authority is within the statutory time for taking action for the breach of planning conditions attached to planning permissions reference 94/1572 and 99/0620.
- iii) whether the Local Planning Authority is within the statutory time limit for taking action for the unauthorised development and use of the land for stationing or positioning caravans.

2.2 The following policies are relevant to this matter;

National Planning Policy Framework (NPPF)
•Part 13 - Protecting the Green Belt

At a local level, the Aligned Core Strategy (ACS) for Gedling Borough (adopted September 2014) Part 1

- ACS Policy A: Presumption in Favour of Sustainable Development
- ACS Policy 3: The Green Belt
- ACS Policy 10: Design and Enhancing Local Identity

The Local Development Plan Policy LPD 35 which requires the massing, scale and proportion of development should appropriate to the immediate context, site constraints and the character of the surrounding area.

Green Belt and the character of the area

2.3 The site is situated within the Nottinghamshire Green Belt opposite Manna Farm. Although the site is screened to the north from the A614 Old Rufford Road by a

mature hedge the roofs of the stables and caravans can be seen through gaps in the hedge and over the top of the hedge.

2.4 Paragraph 133 of the NPPF states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. '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.

2.5 Whilst there is no specific definition of openness in the NPPF, this is a concept which relates to the absence of built form; it is land that is not built upon. Openness is therefore epitomised by the lack of buildings, but not by buildings that are unobtrusive, camouflaged or screened in some way. Any construction harms openness quite irrespective of its impact in terms of obtrusiveness or its aesthetic attractions.

2.6 Although one caravan used as a shelter and to provide tea making facilities may be considered a chattel incidental to the lawful use of the site, the two additional caravans are considered unnecessary for the equine use, especially in view of the fact that the large static caravan is also used for storage of clothing and personal items.

2.7 The dog kennels and shed used to store personal items and clothing are also structures unrelated to the lawful use of the land and are contrary to the fundamental aims and policy of the NPPF and are detrimental to the character of this rural area and in conflict with local policies.

Breach of Planning Conditions attached to Planning Permission reference 94/1572 and 99/0620

2.8 Condition 3 of planning permission reference 94/1572 and condition 4 of planning permission 99/0620 both state "The stable building hereby approved shall not be used for any commercial purposes whatsoever, including liveries or a riding school". The reason given for the conditions was "to ensure compliance with Green Belt policies".

2.9 There is a clear breach of these conditions as it is known there are at least two tenants using the stables for livery of their own horses.

Time Limits

2.10 The statutory time limit for taking action for a breach of planning condition and a

material change of use of the land is 10 years. In this case the evidence available to the Council strongly suggests that the breach of the planning conditions prohibiting a livery and commercial use of the stables has on balance of probabilities been continuing for more than 10 years and the Council is therefore time-barred from taking action for the breach of planning conditions.

2.11 However, the change of use of the land for the stationing or positioning of the two additional caravans including the static caravan has occurred within the last ten years and within the time limit set by the legislation.

2.12 The statutory time limit for taking action against unauthorised built development is four years and there is evidence to show the unauthorised building and structures on the land are recent development and the Council is within time to commence enforcement proceedings including issuing an enforcement notice requiring the caravans and buildings to be removed.

Human Rights

2.13 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 except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

2.14 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 and depending on compliance with the notice it might well be justified to take court action.

Equalities

2.15 The Council's Planning Enforcement team 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 in the individual circumstances and which are in accordance with the Council's policy and government legislation.

- 2.16 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 Councils 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

- 2.17 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.
- 2.18 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the use of the land for the positioning or stationing of the large static caravan and one of the touring caravans on the land and the removal of the unauthorised structures and buildings on the land.

3 Conclusion

- 3.1 A breach of planning control has been identified which is detrimental to the openness of the Green Belt and the character of the surrounding countryside.
- 3.2 The breach involving caravans and unauthorised buildings being placed on the land and conflicts with both national and local policies. Negotiations with the occupiers of the land has failed to rectify the breach and failure of the Council to act in these circumstances may leave a serious breach of planning control to become established and outside of the control of the Local Planning Authority.
- 3.3 However the breach of the planning conditions restricting any livery or commercial use of the land has been continuing for more than 10 years and the Council is out of time to take action in this matter.
- 3.3 The Council should now commence enforcement action without delay by issuing planning enforcement notices requiring the removal of the large static caravan and one of the touring caravans and the removal of all unauthorised buildings and structures on the land. No further action should be taken against the livery use of the stables.

4 Recommendation

4.1 That the Service Manager, Development Services, in conjunction with the Director of Organisational Development & Democratic Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and proceedings through the courts if required to ensure;

- (a) the removal of the static caravan and one of the touring caravans currently positioned on the land**
- (b) the removal of all unauthorised buildings and structures on the land.**