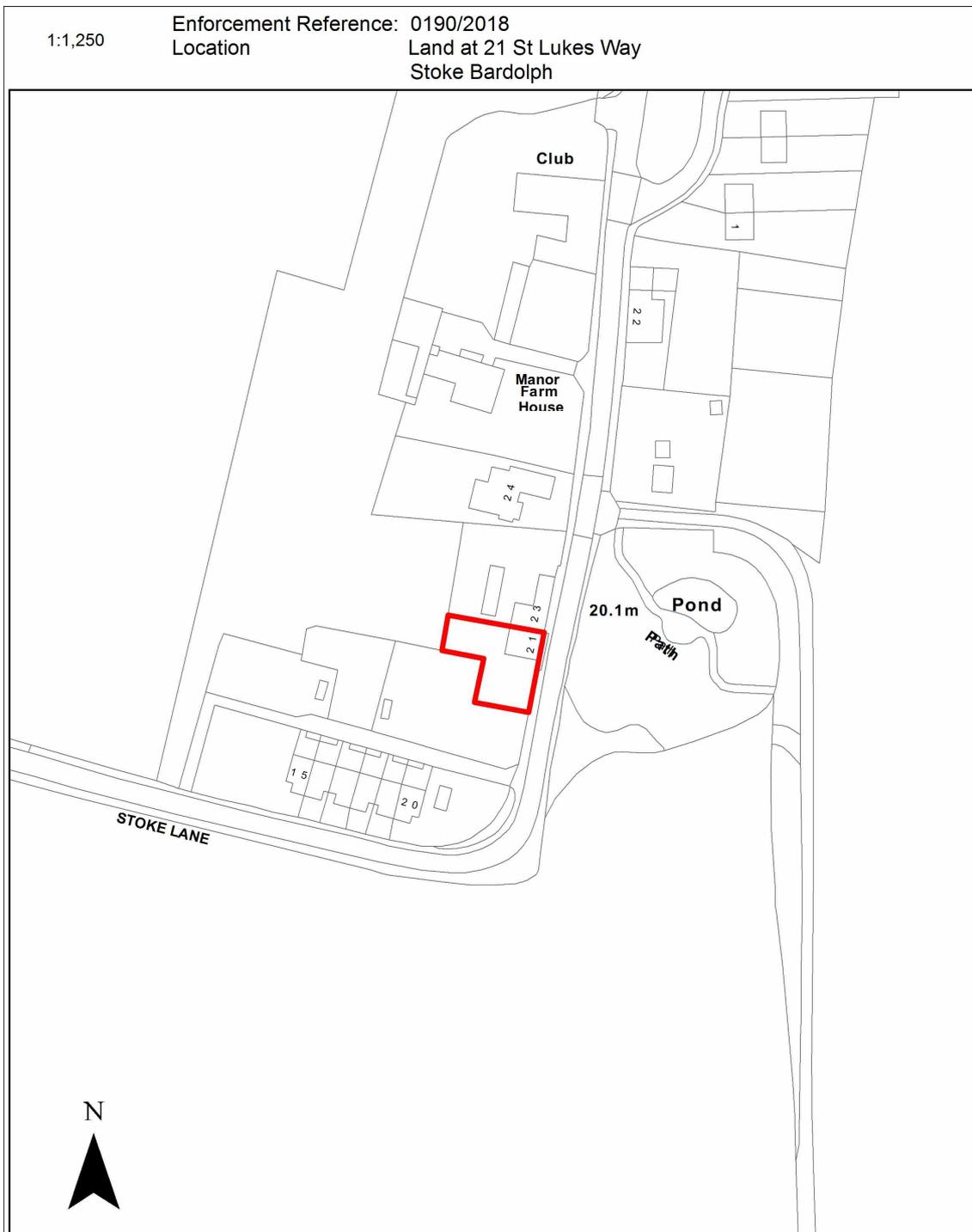


Planning Enforcement Report for 0190/2018



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Report to Planning Committee

Reference Number: 0190/2018

Location: Land At No. 21 St Lukes Way Stoke Bardolph

Breach of Planning Control: **Material change of use of residential dwelling and garden (Use Class C3) to a mixed use of residential dwelling and garden (Use Class C3) and a car sales business (sui generis) and storage of vehicles in connection with that business (Use Class B8).**

1 Background

- 1.1 The Council first received complaints about car sales and car storage business operating from No. 21 Stoke Lane, Stoke Bardolph in October 2018. The owner admitted they were involved with a car sales business and that they took vehicles home to photograph for the sales advertisement. They stated the vehicles were then stored in the garden area and on the highway immediately outside of their home at 21 St Lukes Way/Stoke Lane.
- 1.2 The owner gave a verbal undertaking that they would cease the activity and would only operate the car sales from their commercial premises. The telephone conversation was followed up on 6th November 2018 with a letter from the Council which advised that the activities involving car sales, car storage and bringing vehicles to the property to photograph should cease immediately to avoid formal action by the Council.
- 1.3 On the 22nd November 2018, a drive by site visit showed that a number of vehicles were still parked at the property. On the 27th November 2018 a search on the internet showed vehicles parked at the property on the 22nd November were advertised for sale. The photographs advertising the vehicles clearly showed the vehicles had been photographed at the property.
- 1.4 On the 27th November 2018 a telephone call was made to the owner as a 'test purchase' to ascertain if the vehicles advertised on the internet and seen at the property were still for sale. The owner confirmed this was the case and invited the caller to view the vehicles at 21 St Lukes Way/Stoke Lane, Stoke Bardolph. The evidence shows that the car sales and storage is continuing at the site despite the owner's undertaking that it would cease.

2 Site Description

- 2.1 The site is towards the southern end of Stoke Bardolph and is in the green belt. No.21 Stoke Lane, appears as a detached two storey dwelling with a rear single storey and with its side elevation up to the highway at Stoke Lane.
- 2.2 The vehicle access to the site is to the north of the dwelling from Stoke Lane immediately after a left hand bend when travelling into the village from the A612 Colwick Loop Road. The garden land immediately in front of the principal elevation is hard surfaced with shingle and contains a double garage and wood store. There is sufficient room to park 6 to 7 vehicles within the garden curtilage. Other vehicles are frequently parked on the highway in the vicinity of the property.

3 Planning History

- 3.1 Planning permission was granted in May 2005 to divide the property into two semi-detached dwellings. (Reference 2005/0282)
- 3.2 In July 2005, the Council granted planning permission for a new access to the site. (Reference 2005/0577)

4 Assessment

- 4.1 No.21 Stoke Lane is a residential property in the small rural village of Stoke Bardolph and within the Nottinghamshire Green Belt. The property leads directly from Stoke Lane and although Stoke Lane is within the 30mph speed limit at this point, it is rural in appearance. In addition there is a left hand bend just before the property as the village is approached, with drivers needing to pull out or stop suddenly if there are vehicles parked on the highway.
- 4.2 The use of the premises to operate a car sales and associated storage business is not incidental to the enjoyment of the dwelling house and requires planning permission. No such permission has been applied for nor granted.
- 4.3 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 58) 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.
- 4.4 The main considerations when deciding whether to take enforcement action in this case are;
 - i) whether the use of the dwelling for car sales and an associated storage business has any detrimental effect on the Green Belt, the character of the area or the environment, on the amenities of other occupiers of nearby dwellings or on highway safety.

ii) whether the Local Planning Authority is within the ten year statutory time limit for taking action for a material change of use of the land.

Planning policy considerations

- 4.5 The fundamental aim of the NPPF is that the planning system should achieve sustainable development by three overarching objectives and in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area. It attaches great importance to positive improvements in the conditions which people live and work and paragraph 130, the NPPF states that “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...”
- 4.6 Chapter 13 of the NPPF seeks to protect the openness of the Green Belt.
- 4.7 At the local level, Policy 10 of the Greater Nottinghamshire Aligned Core Strategy (2014) seeks to proactively promote good design and reinforce valued local characteristics. In order to achieve this, the policy approach sets out a number of criteria to reinforce valued local characteristics.
- 4.8 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers and Policy LPD 34 seeks to protect residential gardens and aims to ensure any development does not result in harm to the character or appearance of an area.
- 4.9 Policy LPD 35 requires the massing, scale and proportion of development should be appropriate to the immediate context, site constraints and the character of the surrounding area.
- 4.10 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety...”

Impact on the character of the area and the environment

- 4.11 Stoke Bardolph is characterised by its open rural appearance, and in the vicinity of the site there are a number of well spaced residential properties with agricultural and park land opposite the site. A view into the open driveway and courtyard area of No. 21 is obtained from the highway and a large number of vehicles parked within the residential curtilage and on the surrounding highway is seen as an alien feature in this rural setting and is detrimental to the character of the village. In addition, it affects the important contribution which the open character of the village makes to the openness of the Green Belt. The use is therefore in conflict with the NPPF and Policy 10 of the ACS and Policy LPD 35 of the Local Plan.

Impact on residential amenity

- 4.12 It is considered that the large number of vehicular movements associated with the use and increased visitors to the site is detrimental to neighbours' amenities and will cause noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes. The use is contrary to LPD Policy 32

Impact on highway safety

- 4.13 Although on this part of the highway the speed is limited to 30mph, it is a country lane often drivers will be surprised as they come out of the bend in the road as they enter the village to find a number of vehicles parked on the highway. Increased vehicle movements, the parking of other additional vehicles on nearby public highway close to a bend in the road is detrimental to highway safety
- 4.14 The Highways Authority have stated they would have "strong objections to a car sales business in this location should an application be submitted, due to the sharp bend in the road, where cars parked fronting the site would cause drivers pulling round not expecting cars to be parked around the bend. All car sales would need enough space to park all cars and also visitors cars within the site. This is a residential property where also the owners' car would need to be off street within the site. The access would need to be wide enough for 2no cars to pass side by side." This requirement cannot be accommodated and so the car sales use is therefore contrary to LPD Policy 61.

Time Limits

- 4.15 The statutory time limit for taking action for a material change of use of the land is 10 years. In this case the evidence available to the Council strongly suggests that the car sales business has been operating from the site for less than 10 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

Human Rights

- 4.16 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.
- 4.17 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

- 4.18 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.
- 4.19 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

- 4.20 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.
- 4.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised business use of the land and removal of the vehicles which are offered for sale and other items not considered incidental or ancillary to the domestic residential use of the dwelling.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the Green Belt, the character of the area and amenities of nearby occupiers of other residential properties and highway safety.

- 5.2 The breach conflicts with both national and local policies. Negotiations with the owners have failed to rectify the breach and failure of the Council to act in these circumstances may leave local residents with a business which adversely affects their well-being and is detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 5.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised business, removal of the vehicles which are not incidental to the enjoyment of the dwelling and all other items associated with the business which are stored on the land and if the notice is not complied with proceedings should be taken in the courts if necessary.

6 Recommendation

- 6.1 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 cessation of the unauthorised car sales business including bringing vehicles to the property to be photographed in readiness for advertising them for sale and**
 - (b) the removal of all vehicles which are not incidental or ancillary to the domestic residential use of the dwelling.**