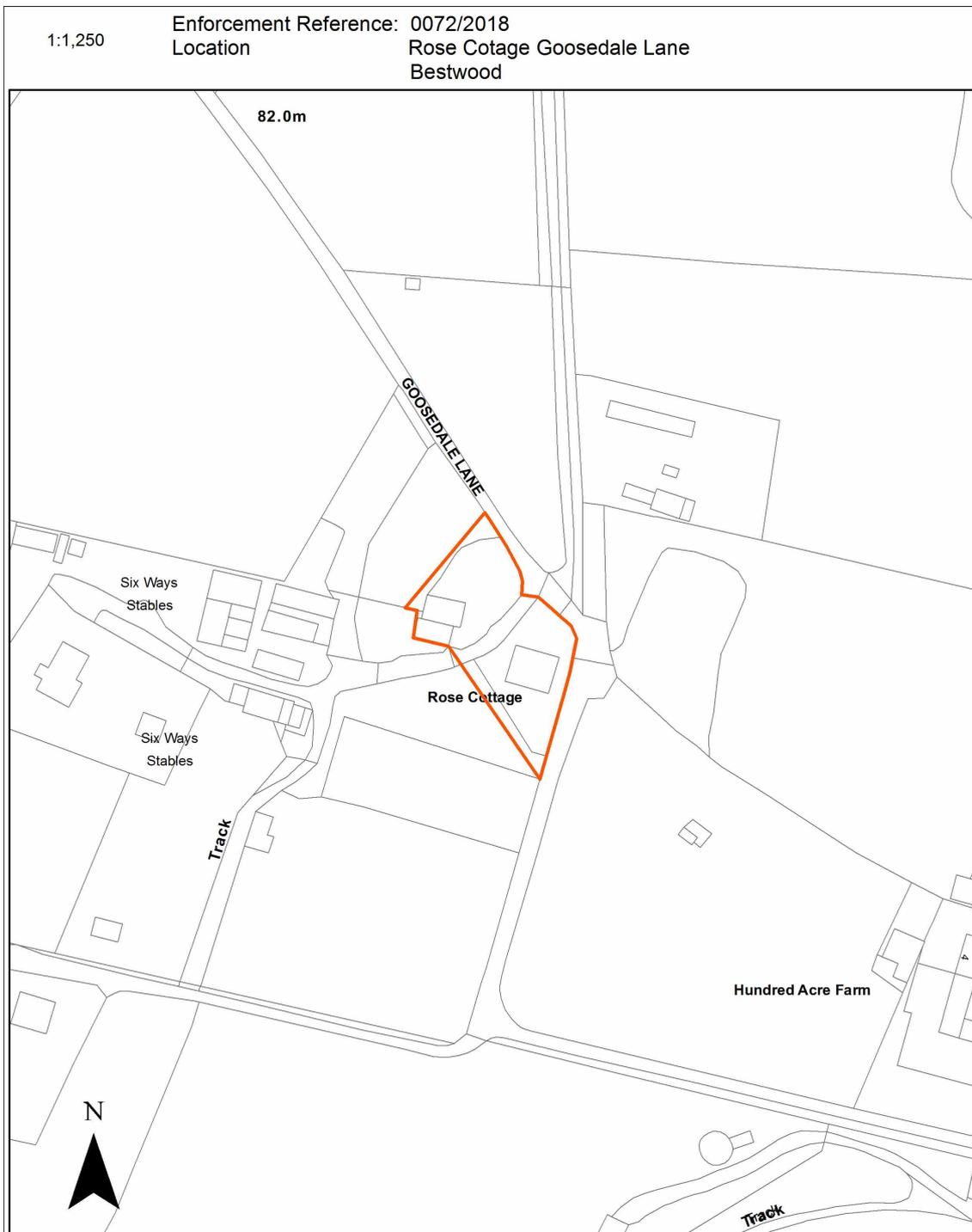


## Planning Enforcement Report for 0072/2018



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## Report to Planning Committee

**Reference Number:** 00072/2018

**Location:** Land at Rose Cottage Goosedale Lane, Bestwood

**Breach of Planning Control:** Unauthorised storage container, material change of use of agricultural land to garden and untidy land.

### 1 Background

- 1.1 Rose Cottage is a detached dwelling in a rural location off Goosedale Lane, Bestwood Village. The garden surrounds the dwelling on all four sides and extends to the north west with a domestic garage and open sided car port and frontage leading directly onto Goosedale Lane. Beyond the defined garden area further to the west, is a parcel of open Green Belt agricultural land. There is no boundary separation between the garden and the agricultural land.
- 1.2 The land immediately to the west and south is a metre higher and rises up to a number of single storey out buildings located to the west of Rose Cottage and which relate to the adjacent property known as Sixways Stables.
- 1.3 At the beginning of April 2018, it was brought to the Council's attention that a large blue container had been positioned at Rose Cottage, Goosedale Lane, Bestwood on the agricultural land outside of the garden area of the property to the north west of the garage and car port.
- 1.4 The owners of the land stated the container was required for storage purposes until the extension to the garage which had been granted on appeal was completed. They gave a verbal undertaking that the container would be removed by the end of June 2018.
- 1.5 Permitted development rights given in Schedule 2 Class E of the GPDO were removed in March 2017 when planning permission was granted to retain the existing open sided car port (reference 2017/0091), preventing the erection of any further outbuildings on the land at Rose Cottage. However, the General Permitted Development Order 2015 allows for temporary buildings to be on a site if they are required temporarily in connection with and for the duration of operations being carried out on the land (GPDO PART 4 Class A)

subject to the condition that once the development is completed the temporary structure is removed. This right was not removed.

- 1.6 In this case, the development was completed but the container was not removed. The owners stated they required the container temporarily for a further three months. They were instructed to remove the container or alternatively to submit a planning application for a temporary permission to retain the container for the additional three months.
- 1.7 In October 2018 the owners of the land submitted a planning application to retain the storage container permanently (Reference 2018/1046) and on 9<sup>th</sup> January 2019 permission was refused.
- 1.8 Officers visited the site on Monday 11<sup>th</sup> February 2019 and saw extension to the garage had been completed and despite the refusal for planning permission, the storage container remained on the land.
- 1.9 At the time of the visit, it was noted the container was on land which is considered to be Green Belt agricultural land. It was also noted that there were building materials, including bricks, roofing tiles, glass tiles, wood, a cement mixer, sheets of plastic, rubble and other items spread across the garden area and on the adjacent agricultural land making the site detrimental to the amenity of the area.
- 1.10 The owner stated the roofing tiles were old tiles replaced from the roof of the dwelling but stated other materials and items had been brought from other sites where their partner had been employed.

## 2 Planning History

Reference	Proposal	Decision	Date
2018/1046	Retrospective planning permission for existing 20ft storage container.	Refused	10.01.2019
2018/0522NMA	NMA relating to application 2017/0092. Extension to rear of garage for workshop.	Acceptable	06.07.2018
2017/0092	Retention of extension to the rear of the garage/workshop	Allowed on appeal	
2017/0091	Retention of a car port	Granted	17.03.2017
2016/0595	Construction of new car port and extension to rear of existing garage.	Refused	05.07.2016
0042/2013	Enforcement action	Breach of Condition Notice served	18/06/2013
2012/0027	Replacement garage	Granted	16.03.2016
2012/1237NMA	A Non-Material Amendment for changes to garage		
2003/2328	Single storey side extension forming utility/workshop. WC & ensuite within roof space, 2 No. front dormer windows.	Granted	12.12.2003
2003/0911	Two storey side extension single storey rear extension and 2 front dormer windows.	Granted	19.06.2003

## 3 Assessment

- 3.1 Rose Cottage is a residential property with a garden to the rear, side and front of the property. It is positioned in a very rural area in the Nottinghamshire Green Belt just off a farm track which is used by a number of local residents living in similar rural housing and farms.
- 3.2 Containers are sometimes considered to be chattels by the courts but whether full or empty, would normally be judged as operational development and tantamount to a permanent building.
- 3.3 In this case the container measures 2.4m in width, 6m in length and 2.4m in height. Even if the container is judged to be a chattel, placing it on land

outside the garden curtilage would amount to a material change of use of the land as the container is being used to store personal and domestic items and it is not incidental to agriculture.

- 3.4 Although the 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.
- 3.5 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.
- 3.6 The main considerations when deciding whether to take enforcement action in this case are;
  - i) The principle of development within the Green Belt and impact on the openness;
  - ii) Whether the Local Planning Authority is within the statutory time limit for taking action.

#### Planning policy considerations

- 3.7 In my opinion, the change of use of the agricultural land to a domestic use with storage of building materials and other items and the positioning of a storage container in this location, irrespective of its size and form, is harmful to the openness of the Green Belt.
- 3.8 Whilst there is no specific definition of openness in the NPPF, this is a concept which relates to the absence of built form. Openness is therefore epitomised by the lack of buildings/structures. Any construction/structure harms openness quite irrespective of its impact in terms of obtrusiveness or its aesthetic attractions.
- 3.9 Given the cumulative nature of the development on site including the extension to the garage and the car port, the storage container even if it were to be relocated within the garden area of the property and open storage of building materials and other items does in my opinion, harm the openness of the Green Belt and does not safeguard the countryside from encroachment and is therefore in conflict with the purposes of including land within the Green Belt and should be regarded as inappropriate development.

- 3.10 In addition the piles of building materials, wood pallets, gas bottles, plastic crates, metal poles, cement mixer, rubble and other items spread across the land is very prominent to any visitors or nearby residents passing the site along the farm track and is detrimental to the visual amenity of anyone passing the area and to the character of the countryside.
- 3.11 No very special circumstances have been given by the owners of the site and it is considered the change of use of the land, the positioning of the storage container on the land and the storage of building materials and other items on the land is in conflict with the NPPF.
- 3.12 The storage container and the untidy condition of the land is also in conflict with Local Plan Policy LPD 19 which does not permit any development which results in a significant adverse impact on visual amenity or significant impact on the character of the landscape. It is also contrary to Policy LPD 32 which does not permit development where there is a significant impact on the visual amenity of nearby residents or occupiers.

#### Time Limits

- 3.13 The statutory time limit for taking action for built development is four years and the time limit for taking action for a material change of use of the land is ten years. In this case the evidence available to the Council strongly suggests the container was brought to the site in April 2018 and although initially it could have been argued the container was on the land lawfully by virtue of the General Permitted Development Order, that permission expired when the garage extension was completed sometime in the summer and the container should have been removed at that time. There are no time limits in which the Council can issue a s215 notice requiring the land to be tidied. The Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the container to be removed and the unauthorised use to cease and for issuing a s215 notice requiring the land to be tidied.

#### Human Rights

- 3.15 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.

- 3.16 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 and a s215 tidy up notice, or pursuing formal proceedings in the Magistrates Court if the notices are not complied with, will result in interference with the recipients' rights. However, it is considered that issuing the notices 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

- 3.17 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.
- 3.18 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

- 3.19 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.
- 3.20 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal of the container and cease the use of the agricultural land as garden and a s215 notice requiring the land to be tidied.

## **4 Conclusion**

- 4.1 The retention of the storage container would result in inappropriate development and would result in encroachment into the open countryside. No very special circumstances have been provided which would outweigh the harm to the open character of the Green Belt.
- 4.2 The change of use of the agricultural land to garden land is also inappropriate development in the Green Belt and detrimental to the character of the countryside. Again, no very special circumstances have been provided. If allowed may result in additional domestic paraphernalia being deposited on the land.
- 4.3 The building materials and other items stored in the open on the land is detrimental to the visual appearance of the area and the openness of the Green Belt.
- 4.4 A breach of planning control has been identified which is detrimental to the character of the area and amenities of nearby occupiers of other residential properties.
- 4.5 The breach conflicts with both national and local policies. The failure of the Council to act in these circumstances may set a precedent for other poor development and which is detrimental to the character and amenity of the area.
- 4.6 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the removal of the structures

## **5 Recommendation**

- 5.1 That the Service Manager, Development Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure the unauthorised storage container is removed and the land is tidied and returned to its lawful use.**