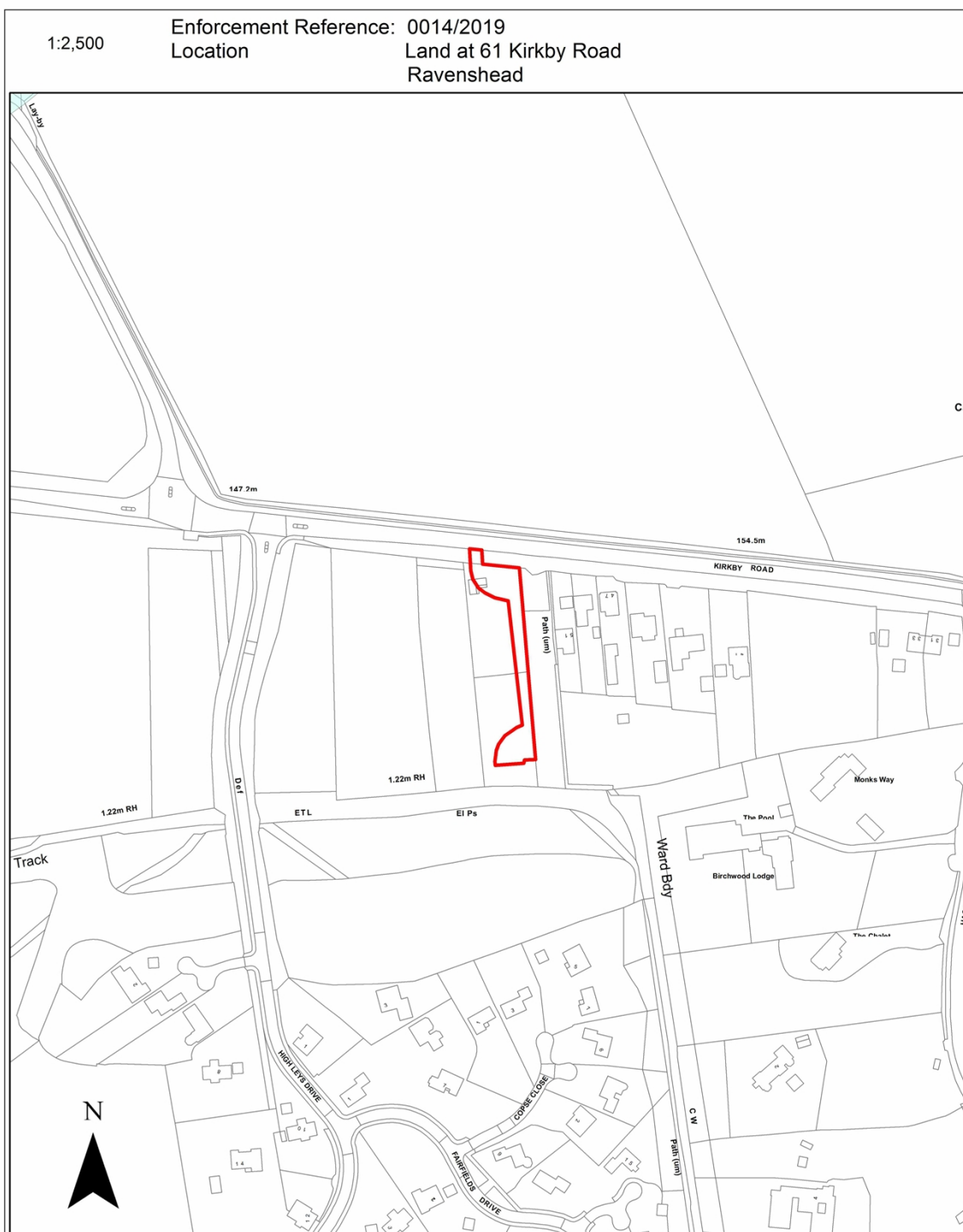




Planning Enforcement Report for 0014/2019



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Report to Planning Committee

Reference Number: 0014/2019

Location: Land at 61 Kirkby Road Ravenshead

Breach of Planning Control: **Material change of use of land to residential curtilage, the construction of a garage and patio area outside the residential curtilage.**

1 Background

- 1.1 Planning permission was refused on appeal in October 2015, (Reference 2015/1273) for the conversion of a stable block to a residential dwelling to the south west of 51 Kirkby Road.
- 1.2 In October 2016 planning permission reference 2017/0704 was granted on appeal for the conversion to residential accommodation but this time the residential curtilage was drawn closely around the rear and side elevation of the building and driveway excluding the open grass land to the front and rear of the property, leaving this land outside of the residential curtilage.
- 1.3 On the 9th August 2017 Planning permission was granted for a detached garage to the east of the dwelling 61 Kirkby Road, Ravenshead (Reference 2017/0704). The approved drawings showed the front of the garage to be set in line with the dwelling, and within the narrow residential curtilage.
- 1.4 In 2018, it came to the Council's attention the garage had been constructed in the wrong position, set back from the front of the dwelling and projecting to the rear and outside of the residential garden area.
- 1.5 In July 2018, the Council received a planning application to retain the garage as built and for the change of use of Green Belt grass land to residential garden for the 2.0m depth that hosts the part of the garage that is outside the residential curtilage. (Reference 2018/0685).
- 1.6 The garage has dual pitched roof with front and rear facing gables and measures 7.0m in depth, 3.7m in width, 2.274m at eaves height and 3.174m at ridge height from ground level. It is set in from the building line by some 2.5m, it has been built 1.3m from the side elevation of the dwelling and it

extends outside the residential curtilage by some 2.0m in depth. The total floor area of the garage is 25.9sqm.

- 1.7 Planning permission was refused for the application on the 4th September 2019 and the decision was upheld at appeal on the 8th May 2019.
- 1.8 The Council's enforcement officer visited the site on Wednesday 22nd May 2019 and met with the owner and Planning Consultant. At the time it was noted there was a further encroachment into the Green Belt with the construction of a patio to the rear of the garage which measures approximately 4.1m X 5.7m and a narrow footpath which extends the width of the rear elevation of the dwelling.
- 1.9 The owner was keen for Members to be made aware that the garage had been constructed in its current location by builders employed by the owner whilst they were away from home. The builders had set the garage back to make it easier to turn vehicles around on the site without consultation with the owner.

2 Site Description

- 2.1 The application site, no.61 Kirkby Road, is a single storey detached dwelling converted from stables. There is a long driveway which runs along the eastern boundary of the site and there are two parking areas, one at the front of the site immediately behind the boundary with the highway and a second area in front of the dwelling. This is the full extent of the garden area to the dwelling. The land to the front of the dwelling and to the rear of the dwelling is open grass land and is not included within the garden area of the property.
- 2.2 The site is located within the Green Belt of Nottinghamshire, outside the settlement area of Ravenshead. The dwelling is set in some 75m from the adjoining public highway, Kirkby Road.
- 2.3 The detached garage is positioned 1.3m to the east of the dwelling and set behind the building line by 2.5m. The footprint of the garage overlaps the residential curtilage by some 2.0m to the rear and further projecting into the Green Belt to the rear of the garage is a patio area of approximately 23.3sq metres and a narrow footpath around the rear of the dwelling.
- 2.4 The site and the land around it slope gently upwards where the dwelling and detached garage sit in a higher position than Kirkby Road. Several trees are present along the driveway and around the larger area of land that is within the ownership of the applicant.
- 2.5 Adjoining land to the west comprises of a paddock land. The nearest residential property is at no.51 Kirkby Road which adjoins an open area of land to the east.

- 2.6 The total floor area of the dwelling is approximately 133.5sqm. The total area of the garage is 25.9sqm.

3 Planning History

Reference	Proposal	Decision	Date
2018/0604	Single storey rear extension and change of use of land to residential.	Refused and upheld on appeal	08.05.2018
2017/0704	Detached garage to the east of the dwelling. The approved drawings showed the garage to be set in line with the building, and within the residential curtilage (as approved under 2015/1273).	Granted	09.08.2017
2016/1268DOC	Discharge of conditions for 2015/1273	Agreed	25.01.2017
2015/1273	Convert the stables and barn into a dwelling house with reduced residential curtilage. (resubmission of 2014/1227).	Granted on appeal	16.11.2016
2014/1227	Convert stables and barn to a dwelling	Refusal upheld on appeal	16.07.2016
2013/0069	Removal of Condition 3 of planning consent 2011/1435 and 2012/1163. This condition stated "the proposed stables should not be brought into use until all elevations had been clad in horizontal soft wood boarding and stained a dark green or dark brown colour".	Allowed on appeal	09.12.2013
2012/1163	Planning permission was granted for a variation on 2011/1435 in that the height of the hay barn was increased to 5.2m and projected forward creating a 'U' shaped form.	Granted	27.11.2012
2011/1435	'L' shaped stable building to the rear of the site to replace the existing stables at the front of the site.		28.02.2012

4 Assessment

- 4.1 The existing dwelling is a relatively modern single detached building that has been previously converted from a stable block. A single detached garage positioned in close proximity to the original building with a patio area to the

rear and a footpath along the rear elevation of the dwelling has been added since the conversion both of which project from the garden into the open countryside and which do not have the benefit of planning permission.

- 4.2 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.
- 4.3 The main considerations when deciding whether to take enforcement action in this case are;
- i) whether the change of use of the open grass land to garden curtilage and the construction of the garage and patio on the open land would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - ii) the effect of the openness of the Green Belt
 - iii) would the harm by reason of inappropriateness and any other harm be clearly outweighed by other considerations and if so would this amount to the very special circumstances required to justify the proposal.
 - iv) whether the Council within the legislative time frame to take action

Planning considerations

Whether the development is inappropriate development in the Green Belt

- 4.4 The construction of the garage has been considered and dismissed at an appeal. The Planning Inspector in his decision letter has considered relevant national and local policies including;
- Policy 3 of the Greater Nottingham Aligned Core Strategy (2014) which seeks to retain the principle of the Nottingham Green Belt such that development will be strictly controlled in accordance with the Framework.
 - Paragraphs 144 and 145 of the Framework (NPPF 2018) which makes it clear that the construction of new buildings within the Green Belt will be regarded as inappropriate development except for certain categories of development including an extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building (Paragraph 145(c)).
 - Policy LPD13 Of the Gedling Borough Local Plan 2018 which states planning permission will be granted for extensions and alterations to buildings providing the proposal does not result in the floor space of the building being over 50% than when originally constructed and providing it does not have a detrimental impact on the openness of the Green Belt or the reasons for including the land within it.

- 4.5 The Inspector considered that although the garage would not amount to a disproportionate increase in floor space by reason of it being within the threshold set by Policy LPD13, he considered the garage projects approximately 2metres beyond the residential curtilage and there would be a loss of openness in spatial terms given that the garage would introduce built form into a presently unbuilt and open area of grassland.
- 4.6 Although the patio and footpath around the rear elevation of the dwelling were not considered as part of the appeal, as the patio protrudes beyond the rear elevation of the garage and the footpath also protrudes beyond the residential curtilage into the open land, the patio and footpath must therefore also impact on the openness of the Green Belt.
- 4.7 The Inspector states that although the garage is modest in scale and does not appear visually intrusive he has had regard to the previous appeal decision whereby the residential curtilage had been significantly reduced from that of an earlier appeal decision and tightly drawn around the dwelling, in order to overcome the concerns of a previous Inspector.
- 4.8 In his decision letter, the Inspector states; "The garage as constructed introduces built development outside of this area [outside of the previously agreed red line and residential curtilage]...the garage is a marginal alteration from the dwelling and garage granted consent but to my mind this was an important consideration in the earlier appeals and as such a material consideration to which I attach significant weight".
- 4.9 He goes on to say, "I find the proposal would contribute towards the outward sprawl of Ravenshead and thus be an encroachment into the countryside, contrary to the purposes of the Green Belt as set out in paragraph 134 of the Framework... I find there is substantial harm to the Green Belt.... I conclude the proposal amounts to inappropriate development".

The effect on the openness;

- 4.10 The construction of the garage, patio and footpath outside of the curtilage approved under the appeal reference APP/N3020/W/16/3153884 results in a material change of use of land within the Green Belt.
- 4.11 The Government attaches great importance to Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristics of Green Belt are their openness and their permanence. Paragraph 134 lists the 5 purposes of the Green Belt which includes 'c) to assist in safeguarding the countryside from encroachment.

- 4.12 The reduced residential curtilage, tightly drawn around the footprint of the building to the rear and side was a material planning consideration by the planning inspector as a way of preventing further encroachment into the countryside when the planning application (2015/1273) (ref: APP/N3020/W/16/3153884) was allowed under appeal.
- 4.13 The change of use of the land results in built form occupying part of this land. Given that the land was previously free from built form and the curtilage was drawn tightly around the original proposal to re-use an existing building it must be concluded that the change of use of the land does not preserve the openness of the Green Belt in this location and is contrary to paragraph 146 which requires the change of use of land to preserve the openness of the Green Belt.
- 4.14 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.

Special circumstances

- 4.15 No very special circumstances have been provided in respect of the retention of the garage, patio or footpath or the change of use of the land to garden land.

Time Limits

- 4.16 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 is the change of use has taken place since the conversion of the stable and certainly within the last 10 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease and the garage, patio and footpath to be removed from the non-domestic land.

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 domestic use of the land and removal of the garage, patio and footpath from the land.

5 Conclusion

- 5.1 Planning permission was only granted for the conversion of the stable on the provision that the open Green Belt land at the front and rear of the property was protected by ensuring it was kept outside of the residential curtilage.

- 5.2 Although the owner maintains the garage was built in the wrong location without his knowledge, enforcement action is never taken because of the intention of the owner but it is only taken because there is demonstrable harm caused by the unlawful development.
- 5.3 The patio and footpath add to the domestic appearance of the land and affect the openness of the Green Belt. 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 will set a precedent for future development in the Green Belt.
- 5.4 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised residential use of the land, removal of the part of the garage, the patio and footpath which protrudes beyond the garden curtilage and if the notice is not complied with proceedings should be taken through the courts if necessary.

6 Recommendation

- 6.1 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 change of use of the open land to domestic curtilage ceases and the part of the garage, patio and footpath which protrudes onto the non-domestic land is removed and the land reinstated to its previous undeveloped state.**