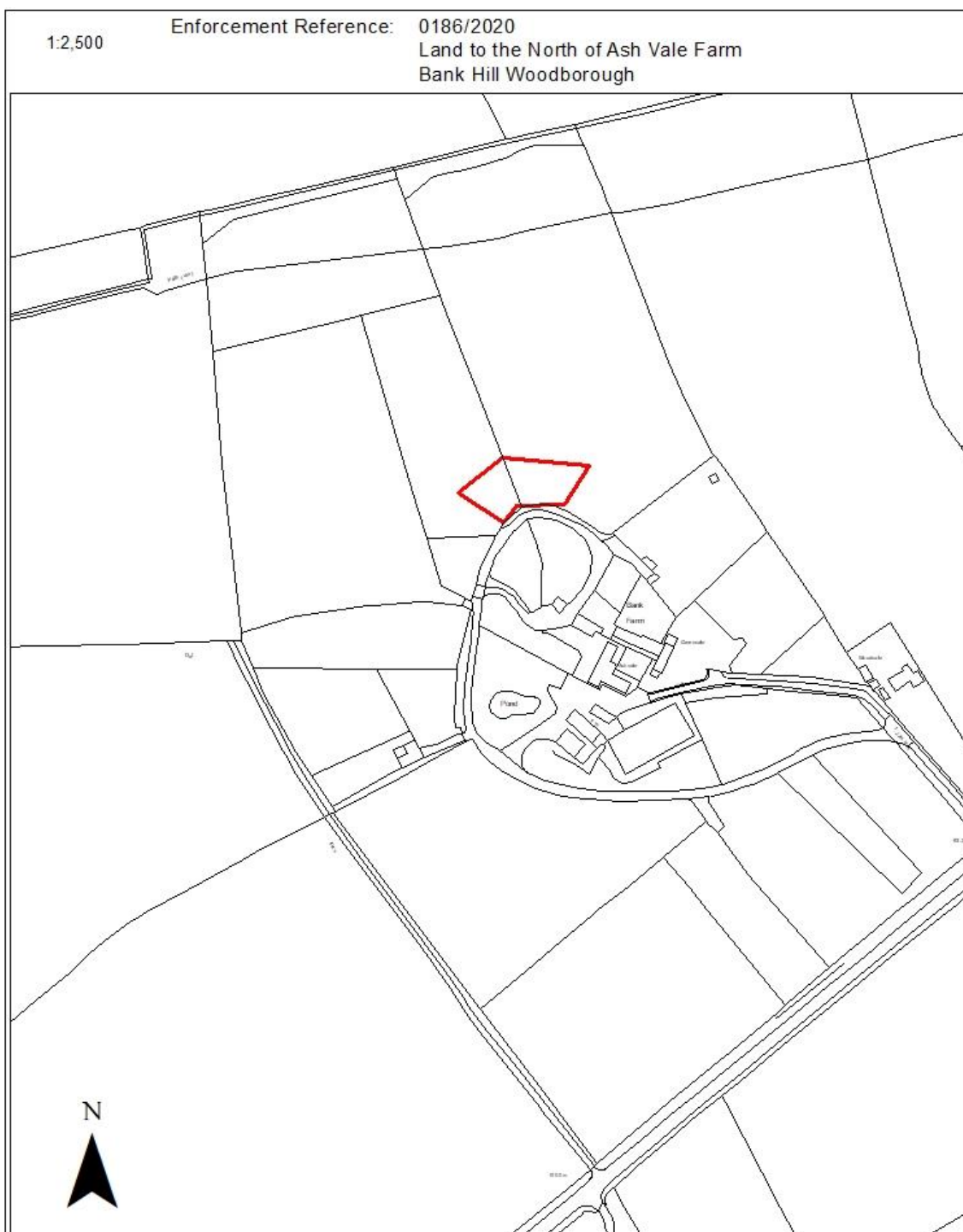




Planning Enforcement Report for 0186/2020



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Report to Planning Committee

Reference Number: 0186/2020

Location: Agricultural land to the north of Ash Vale Farm, Bank Hill, Woodborough

Breach of Planning Control: The construction of an unauthorised building, engineering works, unauthorised fence and earth bund.

1 Background

- 1.1 At the end of September 2020, it was brought to the Council's attention that a new and unauthorised building had been constructed on agricultural land to the north of Ash Vale Farm, Bank Hill, Woodborough.
- 1.2 The Council's Planning Enforcement Officer attended at the site on the 21st October 2020 and noted a raised area measuring approximately 12m X 12m, topped with a concrete base had been constructed on the land and an outbuilding made from logs with an artificial tiled roof of a 'Swiss chalet/skiing lodge' design measuring approximately 9m X 4m had been erected on the concrete base and on land designated as countryside and part of the Nottinghamshire Green Belt.
- 1.3 The building is divided into two rooms or areas; the first area to the east when looking at the building from the front, is a large seating area and the second area of the building, the western 'wing', is fitted with a wood burner or cooking facilities. There is a flue coming through the roof from over the wood burner/cooking stove to extract any fumes.
- 1.4 Externally, there are two seating areas to the front and rear of the building arranged with domestic garden table and chairs and benches made from skis. Access is gained to the building via a shared unmade track to the rear of Ash Vale Farm house and other neighbouring residential dwellings. The dwellings and residential gardens are to the south of the track and agricultural land on which the unauthorised building is located to the north of the track. Wooden steps lead from the access track to the raised area and the building.
- 1.5 A post and rail fence had been erected approximately 40m from the track to the north, separating the part of the land with the building from the rest of the

agricultural field and an earth mound had been constructed beyond the fence to screen the unauthorised building.

- 1.6 The Council Officer met with the owner of the building who advised he had built it as a 'beer den' for his friends and to cheer his daughter who was 'finding the lockdown difficult'.
- 1.7 Although the building would be permitted development if erected in the owner's residential garden more than 2m from any boundary, the owner stated he did not want the building in his garden because activities taking place in the 'chalet' might disturb his neighbours.
- 1.8 The building is outside of the residential curtilage and there is no permitted development rights for such a building in this location.
- 1.9 The owner has declined to remove the building.

2.0 Planning History

- 2.1 There is no planning history on this site.

3 Assessment

- 3.1 Schedule 2 Part 1 Class E of the General Permitted Development Order 2015 (GPDO) grants permission for a building within the curtilage of a dwelling house, if it is incidental to the enjoyment of the dwelling, subject to certain restrictions but this building is outside of the residential curtilage where there are no permitted development rights for domestic buildings and no planning permission has been granted for the building or the engineering works increasing land levels and topped with a concrete base or the earth bund intended to screen the unauthorised building in this location.
- 3.2 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 2018 (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.
- 3.3 The main considerations when deciding whether to take enforcement action in this case are;
 - i) the principle of the development.
 - ii) the impact of the development to the openness and character of the Green Belt
 - iii) the visual impact of the proposal on the character and appearance of the locality

- iv) the impact of the proposal on the residential amenity of occupants of the neighbouring properties
- v) 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 to a domestic use and the construction of the domestic style building.

3.4 Planning Policies

The following policies are relevant to this development:

- i) National Planning Policy Framework
- ii) Part 13 Protecting the Green Belt
The Aligned Core Strategy (ACS)
- iii) ACS Policy 3: The Green Belt
Gedling Borough Council Local Planning Document.
Policy LPD 19 - Landscape Character and Visual Impact
LPD 32 Amenity

3.5 The Principle of the development and the impact on the Green Belt

Crucial in the consideration of the principle of this development is section 13 of the NPPF with regard to 'Protecting Green Belt Land' and the following issues are relevant and require addressing.

- i. Whether or not the proposal would constitute inappropriate development in the Green Belt
- ii. If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other, is clearly outweighed by other considerations as to amount to the very special circumstances necessary to justify the development.

3.6 The unauthorised building and associated works is intended for domestic leisure purposes but has been built outside of any residential curtilage in the Green Belt. Although there is no specific definition of openness in the NPPF, it is a concept which relates to the absence of built form or development; it is land that has not been developed.

3.7 Openness is therefore epitomised by the lack of buildings or development (in this case a domestic outbuilding), but not by development that is unobtrusive, camouflaged or screened in some way. Any development harms openness quite irrespective of its impact in terms of obtrusiveness or its aesthetic attractions.

This building can be clearly seen from the agricultural land and popular public footpath leading from Westfield Lane to the B684 Mapperley Plains, which runs to the north of the building along the valley and it has both a detrimental visual impact and affects the openness of the Green Belt.

- 3.8 There were no buildings on the land prior to the recent construction of the chalet. Paragraph 145 of the NPPF unequivocally states; “A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt”.

This new unauthorised building does not fall within any of the exceptions given in paragraphs 145 or 146 of the NPPF and must therefore be considered as inappropriate development and by definition, harmful to the Green Belt and it results in unacceptable encroachment contrary to the five principles of Green Belt policy and to ACS Policy 3.

- ii. Are there any very special circumstances to justify the development.

- 3.9 There are two steps to considering ‘very special’ circumstances;

- Any individual factor taken by itself which outweighs the harm caused to the Green Belt,
- Whether some or all the factors in the case when taken as a combination outweigh the harm caused to the Green Belt

- 3.10 The case must be decided on the planning balance qualitatively rather than quantitatively. In other words the benefits and very special circumstances must be demonstrated to outweigh the harm to the Green Belt that is inherent in its development. In this case the owner has not provided any special circumstances for why planning permission should be granted for the new domestic building in this location. The development is in conflict with principals of the NPPF and ACS Policy 3.

Impact on the character of the area.

- 3.11 The area between Westfield Lane and Mapperley Plains (the B684) is agricultural land with a public footpath travelling between Woodborough and Mapperley Plains. The land is open with small groups of mature trees and it slopes gently upwards towards Bank Hill and the unauthorised building.
- 3.12 The unauthorised building is visible from the footpath and it is an incongruous feature in this open area of countryside causing a significant adverse impact on the character of the landscape and contrary to Policy LPD 19.

Impact on residential amenity

- 3.13 Access to the site is via a track to the north of the residential dwellings and to the south of the site. Although other domestic dwellings are set some distance from the unauthorised building, the use of the building by a group of visitors for partying and drinking would increase the vehicular traffic and there may be noise and loud music emitting from the building which could impact on the amenities of the occupiers of nearby dwellings in conflict with Policy LPD 32

Time Limits

- 3.14 The statutory time limit for taking action for unauthorised change of use of the land for a domestic use is ten years. In this case the evidence available to the Council strongly suggests the development only commenced this year and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice.

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 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 an enforcement notice would be a proportionate response to halt 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.

4 Conclusion

- 4.1 A breach of planning control has been identified. The development has resulted in significant harm to the character and appearance of the countryside and the openness of the Green Belt.
- 4.2 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 result in an unauthorised building, engineering works which consist of a raised platform and concrete base, the erection of a fence in connection with an unauthorised domestic leisure use and the formation of an earth bund which are not necessary for an agricultural use, remaining on the land.
- 4.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the removal of the building, the concrete base and raised platform, the fence and the earth bund.

5 Recommendation

- 5.1 **That the Assistant Director - Planning and Regeneration, be authorised to take all enforcement action including the service of any enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure the unauthorised development at the site is removed.**