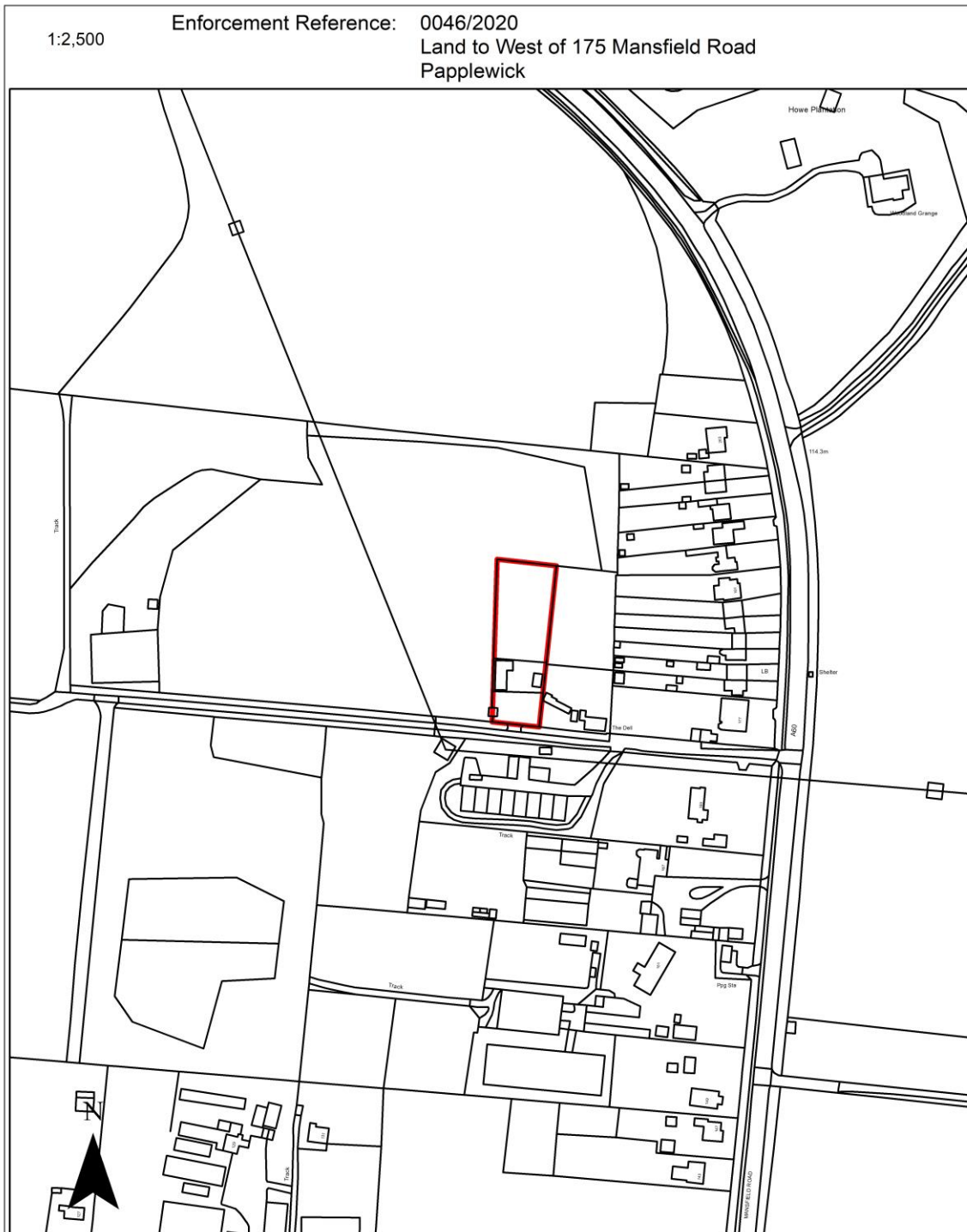




## Planning Enforcement Report for 0046/2020



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.  
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## **Report to Planning Committee**

**Reference Number:** 0046/2020

**Location:** Land to the west of 175 Mansfield Road Papplewick.

**Breach of Planning Control:** Change of use of land from an equine or agricultural use to a use involving the repair and storage of motor vehicles and unauthorised development.

### **1 Background**

- 1.1 The site is situated in the Nottinghamshire Green Belt. It comprises of an area of hardstanding and an area of grass paddock land measuring approximately 0.21 hectares in total. It is accessed from Mansfield Road via an unadopted narrow private road.
- 1.2 There is agricultural land surrounding the site but a Certificate of Lawfulness was granted for a storage use to the Old Mushroom Farm in 2017 which is just south of the site, when it was shown an unauthorised storage use had taken place on the farm for more than ten years. To the east, there are a small number of residential properties.
- 1.3 In January 2007, planning permission was granted for an 'L' shaped stable block of four stables and a tack room (Reference 2006/1064) with dimensions of 15.21m X 9.17m.
- 1.4 In November 2016, the Council approved an application to discharge the planning conditions (Reference 2016/1019DOC) which included approval of materials.
- 1.5 In October 2017, the Council received a complaint that the development had commenced but it was not in accordance with the approved plans. Officers attended the site and noted the foundations had been dug and building work on the stable block had commenced and appeared to be in accordance with the dimensions as approved and so there was no breach of planning control. Council records confirmed the development had commenced by 2010, within the three years required for the permission to remain extant.
- 1.6 In December 2017, Council Officers attended again at the site and met with the owners. It was noted that although the stables had been built in accordance with the approved dimensions and with the approved materials, they had been

built to a higher standard than would usually be expected for stables including a cavity wall and insulation and domestic style windows and doors. There was also an indication in the brick work and gaps in the internal block work, that additional windows would be inserted in the future. In addition, a letter box had been installed on the very large domestic looking gates, which the owners said was needed to receive the horse passports. He also said the gates were needed for security and to stop fly tipping. There were no horses on the site at the time of the visit.

- 1.7 It was requested that the owner submitted a new planning application to retain the stables showing the fenestration and door details as built and for the retention of the boundary walls and steel gates. The application reference 2017/1272 was refused permission in January 2018.
- 1.8 Although, it was suspected the building had been constructed for a residential use, there was not enough evidence at that time to succeed at an appeal if an enforcement notice was issued alleging the building was for a residential purposes. It was decided to wait to see how the building was to be fitted out internally and how it was to be used when it was finished rather than issue an enforcement notice just requiring the windows and doors to be changed.
- 1.9 There was no concern that the Council would be out of time for taking action as the building is still not substantially completed and the 'time clock' only starts 'ticking' from when the building is substantially completed.
- 1.10 More recently, a three sided wooden structure which has the appearance of a double domestic garage has been erected on the land opposite and facing the approved stable building and there is also a dividing wall measuring 1.5metres on the site. In addition flood lights and CCTV security cameras have been erected around the site on tall poles.
- 1.11 Outside of the redline of the site, along the private road and in front of the boundary walls of the site, an area of land has been turfed and two 1.8m high statues have been placed on the land. Two lanterns have been positioned on top of the gate pillars and so the pillars and lanterns exceed 2m in height and railings have been erected on top of the front boundary wall. The previous open appearance wrought iron gate has been exchanged for a solid 2m high electronic gate and a post box is positioned outside of the site on one of the gate pillars. The approach to the site has a very domesticated appearance.
- 1.12 The hardstanding area of the site is being used to store a large number of motor vehicles and car parts and there is evidence of car repairs being undertaken on the site. A large canopy has been erected over a recovery truck and vehicle repairs are being undertaken under the canopy as well as within the three sided double garage type building and in the open on the site. The stable building is

still not substantially completed but is being used for the storage of car parts. Recovery vehicles have been seen carrying 'broken down' vehicles to the site.

- 1.13 A farm gate leads from the hardstanding area of the site into the paddock and to the north of the 'stable' building. The paddock is being used for storage of building materials, corrugated roofing material, window frames, planks of wood and a large trailer. In addition there is clear evidence of bonfires for the disposal of waste being held on the site.
- 1.14 A Planning Contravention Notice which requires the recipient to answer in writing certain questions put to them about the activities and development on the site has been served on the owner of the site but has not yet been completed and returned.

## **2 Planning History**

- 19.01.2007 Reference 2006/1064 - Proposed stable block for personal use only. Granted permission subject to 3 conditions including must start before 20.01.2010 and before development commences materials must be approved. Photo on file dated 20.01.2010 showing foundations dug
- 18.05.2007 Reference 2007/0250 - Retention of existing hardstanding and change of use of land to mixed use for stabling horses and as a caravan site for one gypsy family with four caravans – Refused
- 14.08.2007 Enforcement Notice served – levelling of land and creation of hardstanding.
- 14.08.2007 Enforcement Notice served – Material change of use of the land for the siting of portable buildings used for a residential use.
- 20.08.2009 Application 2009/0744DOC to discharge conditions on 2006/1064 received.
- 29.08.2013 Letter from planning officer – Condition 2 proposed materials not acceptable and the condition not discharged.
- 08.11.2016 Application 2016/1019DOC - Materials are acceptable – All conditions discharged.
- 23.01.2018 Application 2017/1272 [Retention of] stable block for personal use and boundary walls/steel gates [as built on the site] – Refused

## **3 Assessment**

- 3.1 Although the development and change of use of the site 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.

3.2 The site is located within the designated Nottinghamshire Green Belt and so the main considerations when deciding whether to take enforcement action in this case are;

- whether the development constitutes inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt and the character and appearance of the surrounding area; and
- whether the harm caused by inappropriateness and any other harm are clearly outweighed by other considerations and if so, whether very special circumstances exist that justify the granting of planning permission.
- whether the Local Planning Authority is within the four and ten year statutory time limit for taking action for built development and a change of use.
- impact on neighbours' amenity

#### Planning policy considerations

3.3 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 124 of the NPPF states "Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities." Paragraph 130, of the NPPF further 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..."

3.4 Part 13 of the NPPF seeks to protect Green Belt land. Paragraph 133 of the Framework, outlines that great importance should be attached Green Belts while Paragraph 143 goes on to state that "inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances".

3.5 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.

3.6 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers.

3.7 The site is situated in a rural location within the Green Belt and is predominantly surrounded by open fields. There are a small number of residential dwellings to the east of the site. The unauthorised development consists of the stable

building at variant with the approved plans because of a change to the fenestration and door details, an unauthorised open fronted wooden building, CCTV and lighting columns, an ornamental wall within the site, front boundary walls, pillars with the addition of lanterns and electronic gates adjacent to a highway used by vehicular traffic and exceeding 1 metre in height, the erection of two 1.8 metre high statues on landscaped area at the front of the site. In addition, there is a material change of use of the site from a private equestrian or agricultural use, to a use for the storage of motor vehicles and trailers and vehicle repairs and the change of use of the paddock area from an agricultural or equestrian use for the storage of building materials, holding of bonfires for the disposal of waste and the storage of a trailer.

- 3.8 The unauthorised development and the change of use conflicts with the existing open nature of the surrounding area.

#### Green Belt – Inappropriate development

- 3.9 The stables are not built as approved as the fenestration details and the doors are more of a domestic design than those found in stables and the doors are not wide enough to allow access for horses. In addition, the newer wooden built structure on the site has the appearance of a domestic garage and there is a further domestic appearance with the smaller ornamental wall which has been built within the site. The security lighting and tall poles with CCTV cameras on the top have an industrial feel.
- 3.10 Boundary treatments of up to 1 metre in height can be constructed under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 without permission where they are adjacent to a road used by vehicular traffic. However, the boundary treatment, which is already completed, comprises of a solid brick wall with metal railings on the top, pillars with lanterns and solid electronic gates to the frontage of the site which are measured at over 2 metres depending where they are measured from and landscaping works with two tall statues beyond the boundary. Although this is a small private access road, it is used by vehicular traffic and therefore the 1 metre rule applies.
- 3.11 Paragraph 145 of the National Planning Policy Framework states that the construction of new buildings and structures is inappropriate in the Green Belt, with some defined exceptions but the domestication design of the stables, the wooden building, walls, pillars and gates do not fall within any of the exceptions set out in Paragraph 145 of the Framework. In addition, although Paragraph 146 of the NPPF allows for material changes in the use of land such as changes for use for outdoor sport or recreation, the use taking place on the land does not fall within any of the defined uses set out in Paragraph 146.
- 3.12 Together with the use of this rural site for the storage of vehicles and vehicle repairs the unauthorised development and change of use is considered inappropriate in a countryside location and in the Green Belt.

#### Openness

- 3.13 The Government attaches great importance to Green Belts. The fundamental aim of the policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.
- 3.14 The introduction of the brick built boundary walls, pillars, electronic gates, lanterns and statues, the construction of the wooden three sided building, ornamental garden walls and the change in the character of the stable building together with the lighting and CCTV columns and the use of the land to store and repair vehicles has had an impact on the openness of the Green Belt by introducing structures and chattels which have a 'hard' incongruous and enclosing impact. Whilst the domestication of the stable building and the addition of statues and other structures adds to the loss of openness and has a negative effect.
- 3.15 For the above reasons, given the loss of openness to the Green Belt and in accordance with the Framework, the development is inappropriate development which impacts on the Green Belt purpose of safeguarding the countryside from encroachment and is in conflict with the NPPF and Policy 10 of the Aligned Core Strategy.

#### Very Special Circumstances

- 3.16 No very special circumstances have been provided for the development or the change of use of the site and so the very special circumstances necessary to justify the development do not exist in this case.

#### Impact on Residential Amenity

- 3.16 The use of the site for vehicle repairs and the constant use of recovery vehicles using the private access road will create noise and disturbance for the occupiers of the residential properties to the east of the site. Furthermore, the floodlighting on tall columns impacts on the wider area including the residents of the properties to the east.
- 3.17 The disposal of waste on the site by burning on bonfires has caused smoke, smell and light pollution and has also had a detrimental impact on the amenities of nearby neighbours.
- 3.18 There is a small, currently unoccupied bungalow to the east of the site which is undergoing renovations but which shares a boundary with the site and when the property is occupied the uses on the site will impact greatly on the occupiers of this property.
- 3.19 Taking into account the location and scale of unauthorised use, it is considered that there would be an unacceptable adverse impact on the residential amenities of the occupiers of nearby residential properties contrary to Section 12 of the NPPF (2019), and Policies LPD 32.

#### Time Limits

- 3.20 The statutory time limit for taking action for built development is 4 years from when the development is substantially completed and ten years for a material change of use. In this case it is considered the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the unauthorised development to be removed and the front boundary wall to be removed or reduced in height and for the unauthorised use of the site to cease.

### Human Rights

- 3.21 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.
- 3.22 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

- 3.23 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.
- 3.24 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

- 3.25 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.
- 3.26 In light of all the facts it is now considered expedient to serve an enforcement notice to require the alterations to the stable building to ensure it is built in accordance with the approved plans, the removal of the unauthorised development and structures and the removal or reduction in height of the front boundary wall and gate to 1m and the cessation of the unauthorised use.

### **4 Conclusion**

- 4.1 The unauthorised development and the material change of use has a harmful effect and has resulted in a loss of openness of the Green Belt. The development which has taken place on the site does not fall within any of the exceptions listed in the NPPF is therefore inappropriate which by definition is harmful to the Green Belt.
- 4.2 The breach of planning control at this site conflicts with both national and local policies. The owners have failed to rectify the breach and failure of the Council to act in these circumstances may set a precedent for other unacceptable development and uses in the Green Belt, leaving development which is out of character and detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 4.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the stable building to be constructed as approved including the fenestration and door details, the front boundary wall, pillars and gate to be removed or reduced in height to 1m and all other unauthorised development and structures to be removed. In addition an enforcement notice should require the unauthorised uses on the site to cease. If the notices are not complied with, proceedings should be taken in the courts if necessary.

### **5 Recommendation**

- 5.1 The Head of Development and Place, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Head of Governance and Customer Services take proceedings through the courts if required to ensure the stable building is constructed in accordance with the approved plans including the fenestration and door details, the removal of unauthorised buildings and structures, lighting columns and CCTV columns, statues and other domestic items and paraphernalia, cessation of the unauthorised use and the removal of the front boundary wall, pillars and gates or alternatively the reduction in height of the wall, pillars and gates to 1m.**