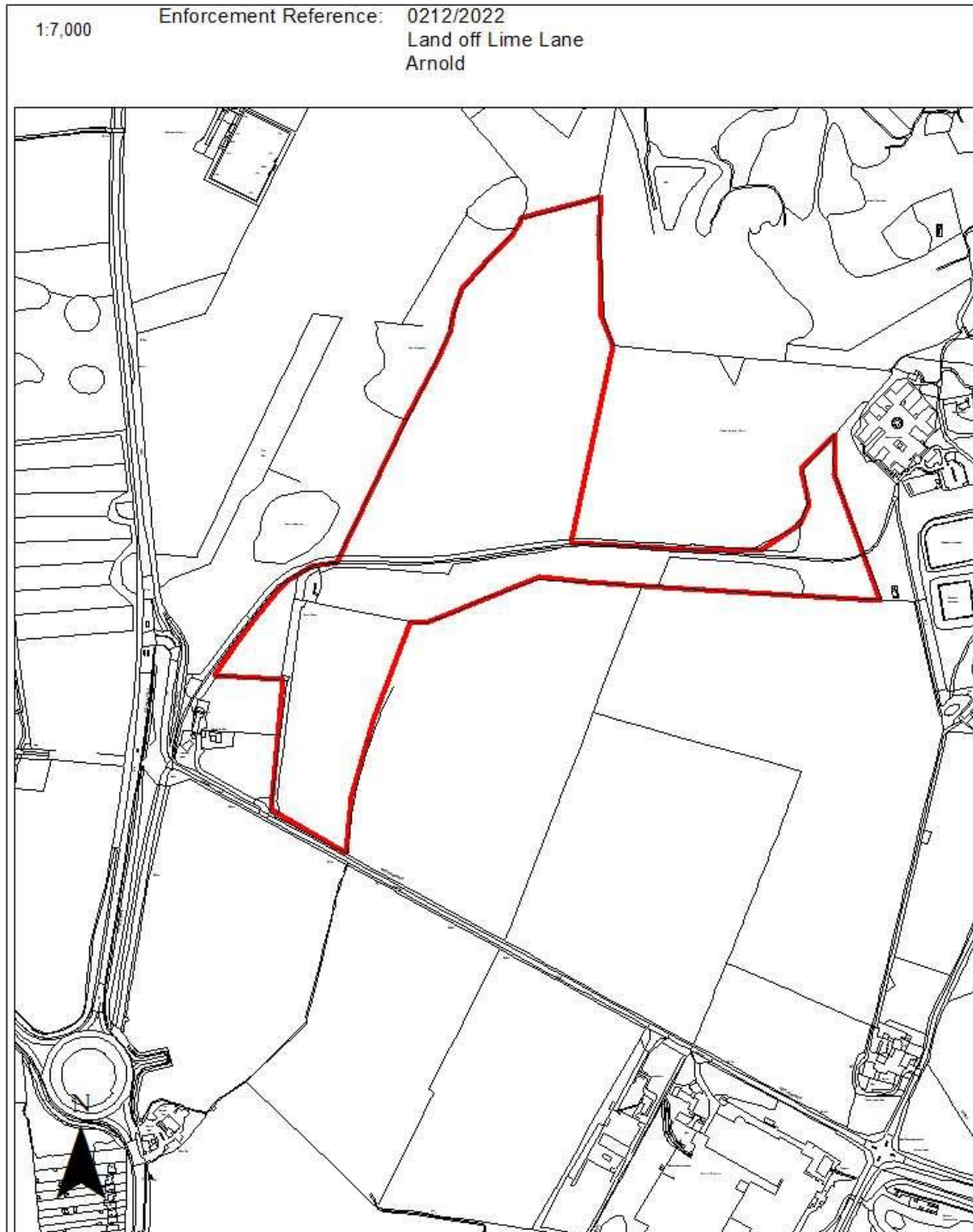




Planning Enforcement Report for 0212/2022



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: 0212/2022

Location: Land at Lime Lane Woods, Lime Lane, Arnold

Breach of Planning Control: **Unauthorised change of use from agricultural land and woodland to outdoor pursuits, cinema and leisure venue with associated siting of storage containers, food vending trailer and other activity based paraphernalia and installation of an access track and car parking area.**

1 Background

- 1.1 In July 2022, the Council's Planning Officers received complaints regarding noise, anti-social behaviour, parking and highway safety caused by festivals held at the site on 2nd and 9th July 2022. These were referred to the Council's Public Protection team for further investigation and a planning enforcement case was opened.
- 1.2 Upon initial investigation the enforcement officer found that the site was being operated by Back to Basics (B2B Events Ltd). The site, marketed as Nott's Maize, offered a maize maze, bush craft workshops, forestry school, outdoor cinema, archery, axe throwing, laser tag and air rifle and crossbow shooting. In addition, seasonal events such as a Halloween labyrinth scare maze, bonfire night and festivals were also taking place on site, all of which represented a material change of use of the site. The site has been in use by B2B Events Ltd since 2018. A review of the planning history for the site revealed no planning permissions relevant to the change of use.
- 1.3 Contact was made with the land owner, B2B Events Ltd and their chosen planning agent in July 2022 to bring the complaints to their attention and to raise concerns that without a relevant planning permission, the only lawful mechanism for operating on site would be a deemed permission under Schedule 2 Part 4 Class B of the Town and Country Planning (General Permitted Development) Order 2015 ('GPDO'). This paragraph of the GPDO permits:

“The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of—

(a) the holding of a market;

(b) motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use.”

- 1.4 The officer expressed concern that based on initial investigation, the site had likely exceeded the 28 days of permitted development for 2022 and that if that were the case the change of use would be unauthorised. They were also advised that planning permission would be required for any change of use that exceeded the 28 day permitted development allowance in Schedule 2 Part 4 Class B of the GPDO.
- 1.5 On 10th August 2022, written confirmation was provided to the land owner, operator and planning agent that the site had exceeded the 28 days of temporary use as provided by the Schedule 2 Part 4 Class B of the GPDO and that there was an identified breach of planning control. They were advised to cease the unauthorised use of the land and revert the site back to agricultural land/woodland use only, including removal of all facilities, fitments, containers etc on site for the remainder of 2022 and thereafter ensure that all temporary uses do not exceed the 28 days provided in the GPDO (as may be amended). Alternatively they were advised they could submit a planning application seeking to regularise the material change of use. They were also advised that any continued unauthorised use of the site would be at their own risk as the Council were considering possible enforcement action, especially in relation to upcoming festival events on 24th and 25th September 2022.
- 1.6 Officers liaised with colleagues in other departments and agencies to establish whether a Temporary Stop Notice or Injunction was required to prevent the September festivals from going ahead. This was due to concerns about residential amenity and highway safety following previous festivals held in July 2022. Following a Safety Advisory Group meeting on 6th September 2022 it was determined that it would not be expedient to take immediate planning enforcement action to prevent the September festivals from taking place, on the basis that proposed mitigation measures addressed the concerns of the Highways Authority and a noise abatement notice would be served to address noise impacts.
- 1.7 The Council received confirmation on 6th September 2022 that Savills had been instructed to prepare a planning application on behalf of the landowner for the other activities on site.

- 1.8 The Council received multiple complaints about noise, anti-social behaviour, highway safety and lighting following the September 2022 festivals and breaches of a noise abatement notice were witnessed by officers in the Council's Environmental Health team. Due to identified breaches of the abatement notice and other issues raised, immediate planning enforcement action was given further consideration to ensure such events were no longer held at the site. The Council wrote to the operator on 26th September 2022 to make them aware that if the use of the site for festivals or large gatherings (including bonfire night) continued, the Council would serve a Temporary Stop Notice, prohibiting all unauthorised activity on site. This would include the unauthorised day to day use of the site including, but not limited to, the outdoor cinema, laser tag, maize maze, bush craft, archery, axe throwing etc. Following this, confirmation was received that a bonfire night event had been cancelled. An Oktoberfest event had also been cancelled prior to the letter being sent. The operator was given 21 days to submit a planning application for the remaining uses on site and advised that failure to submit an application would result in the Council considering enforcement action..
- 1.9 Following some unforeseen delays, an application (ref 2022/1316) was received on 23rd November 2022. The application sought permission for use of land for outdoor sports and recreation, siting of structures for ancillary storage, office and refreshments, and associated track, car park and infrastructure. It is noted that the application did not seek permission for use of the site for large events such as festivals. On receipt of the application and on the basis that the maize maze has finished for the season and there would be limited activity on the rest of the site, no enforcement action was deemed necessary or expedient whilst the application was pending consideration.
- 1.10 On 1st January 2023, the 28 day allowance permitted under GPDO reset. However, by 28th January, the facilities and structures associated with the change of use had been on site for 28 days. The Council therefore maintain that as the structures and facilities have remained on site for more than 28 days, all temporary days permitted under the GPDO have been used and no further temporary uses are permitted for 2023 beyond 28th January 2023. The continued change of use of the site is therefore unauthorised.
- 1.11 As part of the planning application process, officers visited the site on 2nd March 2023. The maize had not yet been grown and a viewing platform used as part of the maize activity could clearly be seen adjacent to the crop field. Notice boards, signage, lighting, toilets, seating etc were still on site as were the storage containers, solar panels and other paraphernalia and structures associated with the use. Further structures were noted in the axe throwing/archery and laser tag areas additional to those present during the August 2022 visit. Trade waste bins, waste items, gas bottles, a small wind turbine, generator and portable generator powered lights were stored to the rear of the containers. The operator confirmed again that all storage containers were required as part of the change of use.
- 1.12 During the visit, further clarification about the site access, track and parking area was sought from the land owner. The pre-existing access point leads to an access track and parking area laid to unbound material. Installation of the track and parking area is an engineering operation that requires planning

permission and no such permission was sought. The owner claims that the track was installed in 2010 and the wider parking area was installed in 2021 to assist with agricultural activity in the field to the east of the site. However, whilst historic photos appear to show a driven route through the field in the location of the track, the laying of the current track appears to have been undertaken around September 2019. 2019 was the year of the first maize maze, which was located in the field immediately to the west of the track in what is now part of the car parking area. The wider car parking area is shown under construction in March and April 2021, with piles of associated material visible on Google Earth aerial photography.

- 1.13 Since the initial noise and anti-social behaviour complaints in July 2022, planning officers have continued to receive regular complaints about the site, relating to the presence of structures and facilities associated with the unauthorised change of use on site, large events being advertised, noise from cinema events and continued unauthorised use.

2 Site Description

- 2.1 The site is located on the north of Lime Lane, Arnold near to the junction with Ollerton Road. The site occupies an area of approximately 23 hectares and for the most part is surrounded to the east and north by agricultural land. To the west of the site are the closest residential dwellings to the site.
- 2.2 Prior to development, the site consisted of agricultural fields with an area mixed woodland to the centre. However, the site is currently used as an unauthorised outdoor pursuits, cinema and leisure venue including activities including a maze, bushcraft, forestry school, laser tag and archery/axe throwing. The site is accessed from a gravel track leading to an informal car parking area. Within the site are a number of ancillary structures including several storage containers, box trailer café, ticket hut and portable toilets adjacent to the car parking area, various structures within the laser tag zone, within the forest school/bushcraft and outdoor cinema zone, within the archery/air rifles/crossbows/axe throwing area and a large spectator stand within the maze zone.
- 2.3 The site is located within the Nottingham-Derby Green Belt.

3 Planning History

- 3.1 Planning application 2022/1316 seeking retrospective permission for use of land for outdoor sports and recreation, siting of structures for ancillary storage, office and refreshments, and associated track, car park and infrastructure is being brought to Planning Committee immediately prior to consideration of the enforcement case. The application has been recommended for refusal, hence the requirement for consideration of enforcement action to remedy the identified breaches of planning control should the recommendation be upheld.

4 Assessment

- 4.1 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 2021 (NPPF) (Paragraph 59) 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.

4.2 The site is located within the designated Nottinghamshire Green Belt and therefore 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;
- 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.
- the impact on residential amenity
- highway safety
- whether the Local Planning Authority is within the statutory time limit for taking action for unauthorised development.

Planning considerations

4.3 The following policies are relevant to the assessment:

National Planning Policy Framework

- Section 2 Achieving Sustainable Development summarised as summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- Section 6 Building a Strong Competitive Economy which identifies the need to allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.
- Section 9 Promoting Sustainable Transport which outlines the need to consider transport issues.
- Section 12 Achieving Well-Designed Places sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
- Section 13 (Protecting the Green Belt) outlines at paragraph 137 the importance the Government attaches to Green Belts and the aim of Green Belt policy to prevent urban sprawl and to retain its essential openness and permanence.

Aligned Core Strategy

- 4.4 At a local level, Gedling Borough Council at its meeting on 10th September 2014 adopted the Aligned Core Strategy (ACS) for Gedling Borough (September 2014) which is now part of the development plan for the area. The adopted ACS forms Part 1 of the new Local Plan for Gedling Borough. It is considered that the following policy of the ACS is relevant:
- Policy A: Presumption in Favour of Sustainable Development – a positive approach will be taken when considering development proposals
 - ACS Policy 2: The Spatial Strategy states that sustainable development will be achieved through a strategy of urban concentration with regeneration.
 - ACS Policy 3: (The Green Belt) establishes the principle of retaining the Nottingham Derby Green Belt.
 - ACS Policy 4 – (Employment Provision and Economic Development) states that the economy of the area will be strengthened and diversified by encouraging economic development of an appropriate scale to diversify and support the rural economy.
 - ACS Policy 10: (Design and Enhancing Local Identity) sets out the criteria that development will need to meet with respect to design considerations.

Local Planning Document

- 4.5 In July 2018 Gedling Borough Council adopted the Local Planning Document (LPD). The following LPD policies are relevant to this breach of planning control:
- LPD18 – (Protecting and Enhancing Biodiversity) sets out that proposals should be supported by an up to date ecological assessment. Any harmful impact should be avoided through design, layout and mitigation or compensation. Where possible, development proposals will be expected to take opportunities to incorporate biodiversity in and around the development and contribute to the establishment of green infrastructure
 - LPD 19 – (Landscape Character and Visual Impact) states that planning permission will be granted where new development does not result in significant adverse visual impact or significant adverse impact on the character of the landscape.
 - LPD 32 (Amenity) states that planning permission will be granted for development proposals that do not have a significant adverse impact on the amenity of nearby residents or occupiers, taking into account potential mitigation measures.

- LPD 46: (Rural Diversification) sets out criteria for rural and employment business proposals.
- LPD 57: (Parking Standards) sets out the requirements for parking.
- LPD 61: (Highway Safety) states that planning permission will be granted for developments that do not have a detrimental impact upon highway safety, movement and access needs.

Green Belt

- 4.6 Crucial in the consideration of the principle of this development is paragraph 137 of the NPPF with regard to protecting Green Belt Land and the following issues are relevant and require addressing. Paragraph 149 of the NPPF specifies that construction of new buildings in the Green Belt should be regarded as inappropriate. Furthermore paragraph 147 states that “inappropriate development is, by definition, harmful to the green belt and should not be approved except in very special circumstances”.
- 4.7 Paragraph 148 goes on to state that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Paragraph 149 b) provides an exception for the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- 4.8 Paragraph 150 at sub paragraph e) of the NPPF also identifies that material changes of use of land (such as changes of use for outdoor sport and recreation) may be considered appropriate development in the Green Belt again providing that they preserve the openness and do not conflict with the purposes of including land within the Green Belt.
- 4.9 Under paragraph 149 b) and 150 e) the NPPF place a requirement on the development to preserve openness of the Green Belt and not conflict with the purposes of including land within the Green Belt, in order to not be considered inappropriate development.
- 4.10 Whilst there is no specific definition of openness in the NPPF, there are numerous high court decisions that have explored this area. Openness has both a spatial and visual aspect. Interpretation of spatial openness naturally includes the absence of built form. Openness and visual impact have different meanings and any development can harm the openness of the Green Belt regardless of its aesthetic appearance or obtrusiveness. In summary openness can be seen as the lack of built form and not by development that is screened from view.

- 4.11 The facilities and structures associated with the unauthorised change of use, including containers, portable toilets, structures and paraphernalia present on site to facilitate the activities, fail to preserve the openness of the Green Belt setting of the site and conflict with the purposes of including land within it and therefore are considered inappropriate development. As such the change of use would by virtue of its inappropriateness be, by definition, harmful to the openness of the Green Belt.
- 4.12 With regards to the track and parking area, paragraph 150 b) identifies that engineering operations may be considered appropriate development in the Green Belt again providing that they preserve the openness and do not conflict with the purposes of including land within the Green Belt. Due to the extent of the track and parking area it fails to preserve the openness of the Green Belt setting of the site and conflicts with the purposes of including land within it. The track and parking area are therefore considered inappropriate development and are, by definition, harmful to the openness of the Green Belt.
- 4.13 As such in line with paragraph 147 and 148 of the NPPF substantial weight should be given to such harm unless very special circumstances are demonstrated which would outweigh the harm.

Very Special Circumstances

- 4.14 In determining whether very special circumstances exist, the following need to be assessed;
- Any individual factor taken by itself which clearly outweighs the harm caused to the Green Belt,
 - Whether some or all the factors in the case when taken as a combination clearly outweigh the harm caused to the Green Belt
- 4.15 The case must be decided on the planning balance and for very special circumstances to exist the benefits must be demonstrated to clearly outweigh the harm to the Green Belt that is inherent in its development. As part of the 2022/1316 application, the applicant put forward what they consider to be the social, economic and environmental benefits of the proposal which they consider would outweigh the harm to the Green Belt identified above. These include enhancement of on-site habitats, benefits to the local economy by virtue of supporting local businesses, facilities, services and attractions and the creation/retention of employment.
- 4.16 There may be some economic benefits from an increase in visitors to the Borough and the commercial activity provides employment for between 6 and 14 members of staff during off peak months an up to 45 staff in peak periods. It is also noted that the site operators are part of the Nottinghamshire County Council and Nottingham City Council Alternative Education Scheme and work with Catch 22 a Department of Education initiative for young people. It is also accepted that from supporting representations submitted under the 2022 application, there is some public benefit in terms of the site being accessible, well attended, maintained and ecologically friendly.

- 4.17 After careful consideration, when balanced against harm to the Green Belt setting of the site and the reasons for including the land within it, the benefits of the unauthorised use and associated operational development would not be so significant to outweigh the identified harm to the Green Belt by virtue of the development being inappropriate. The development is therefore in conflict with the principals of the NPPF and ACS Policy 3 which aims to maintain openness.

Impact on residential amenity

- 4.18 The unauthorised change of use on site has introduced a potential source of noise and disturbance from events and activities held on site and associated vehicle movements. The Council has received complaints regarding noise emanating from the site as a result of the cinema events held in 2022, with allegations that cinema events in 2022 were louder than those held in 2021. The Council's Environmental Health Officers have previously investigated complaints about the cinema events and have been consulted on the planning application. They have not objected to the proposals, which mirror the set up used in 2022, on condition that an appropriate noise limiting condition is attached to any permission granted. However, without a planning permission there is no mechanism to condition noise emissions. It is considered that without such a condition, the unauthorised change of use has potential to cause unacceptable noise and disturbance to those in the locality and would be contrary to LPD 32.

Impact on Character and Appearance of the Area

- 4.19 The change of use of the site and associated operational development has had the effect of urbanising an area that has no such element. Whilst the woodland remains on site to offer some screening, there are still views into the site to the structures, associated activities, vehicle parking areas and track.
- 4.20 Taking this into account it is considered that the development has resulted in undue harm to the landscape character and wider landscape setting of the site and is contrary to Section 12 of the NPPF, Policy 10 of the ACS and LPD 19.

Highway Safety

- 4.21 The Highway Authority have not raised any objections to the recent planning application to retain the access track and parking area, on condition that alterations and improvements are made to the drainage and surfacing of parts of the track to prevent detritus being discharged onto the highway. The required works would cause further harm to Green Belt and be inappropriate development.
- 4.22 It has therefore been concluded that without these works being undertaken, the unauthorised development has an unacceptable adverse impact on highway safety and is therefore contrary to Section 9 of the NPPF (2021), Policies LPD 57 and LPD 61 of the LPD (2018).

Time Limits

- 4.23 The statutory time limit for taking action for operational development is 4 years from when the development is substantially completed and 10 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 for the unauthorised use of the site to cease.

Human Rights

- 4.24 Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right to respect for their private and family life, their home and their 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.
- 4.25 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 and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

Equalities

- 4.26 The Council's Planning Enforcement team operates in accordance with the Council's 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.
- 4.27 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

- 4.28 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.

5 Conclusion

- 5.1 A breach of planning control has been identified. The development has resulted in significant harm to the openness of the Green Belt, impact on residential amenity and highway safety.
- 5.2 The breach conflicts with both national and local policies. Failure of the Council to act in these circumstances will result in an unauthorised change of use and operational development.
- 5.3 Evidence available to the Council indicates the unauthorised change of use commenced within the last 10 years and operational development completed within the last 4 years. Furthermore there are no very special circumstances that exist to justify the change of use or operational development of this site within in the Nottinghamshire Greenbelt.
- 5.4 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised change of use of the site to an outdoor pursuits, cinema and leisure venue and removal of all associated structures, infrastructure, fitments, storage containers, food vending trailer and other activity based paraphernalia and removal of the access track and parking area.

6 Recommendation

- 6.1 That the Head of Development and Place, in consultation with the Head of Governance and Customer Services, be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and issue of proceedings through the courts, if required, to prevent further breaches of planning control.**