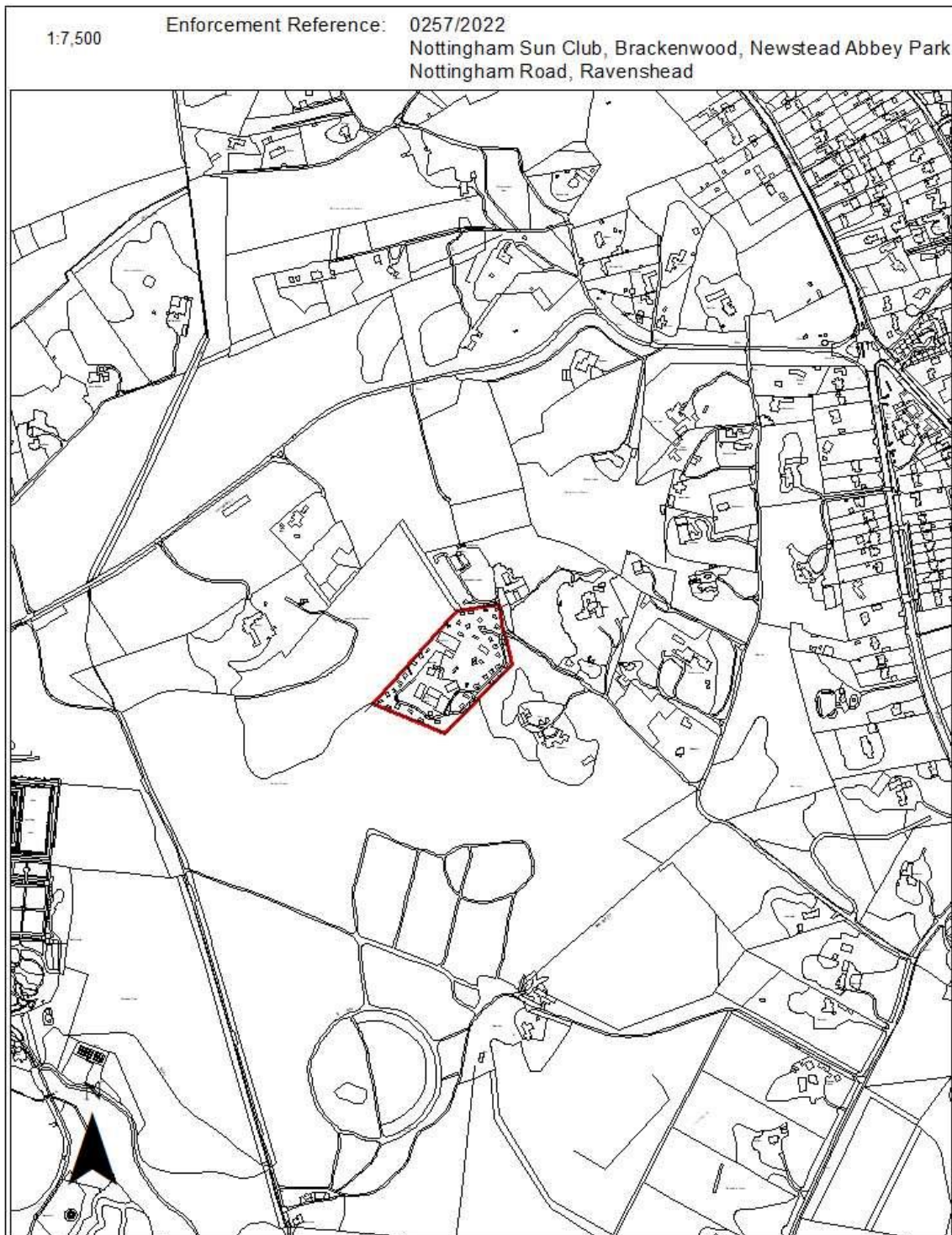




## Planning Enforcement Report for 0257/2022



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## Report to Planning Committee

**Reference Number:** 0257/2022

**Location:** Nottingham Sun Club, Brackenwood, Newstead Abbey Park, Nottingham Road, Ravenshead. NG15 8GB

**Breaches of Planning Control:** **Unauthorised Construction of a glamping structure.**

### 1. The Breach of Planning Control

- 1.1. The construction of a glamping structure. There has been a building operation on the site to facilitate the construction of the structure. The structure is not moveable and has a sufficient degree of permanence to be considered operational development. There are no permitted development rights applicable to the leisure use of the land and therefore the construction of the structure is development requiring planning permission.

### 2. Site Description

- 2.1. The Nottingham Sun Club is a private leisure facility located within Newstead Abbey Park. The Club's north-western and south-western boundaries abut both Newstead Abbey's historic Listed Park and Garden and a Local Wildlife Site. The land is covered by a Woodland Tree Preservation Order and is located within the Green Belt.
- 2.2. The Sun Club is a 2.5 hectare camping and recreational site. It has a clubhouse pavilion, wooden chalets, tennis courts and a camping field. The glamping structure has been constructed within the camping field section of the site.

### 3. Relevant Planning History

- 3.1. Various historical planning applications relating to the alterations and extensions to existing wooden chalets on the site.

### 4. Planning Legislation and Policy

- 4.1. The Town and Country Planning Act 1990  
Town and Country Planning (General Permitted Development) Order 2015  
Town and Country Planning Use Classes Order 1987

## Policy Considerations

4.2. The following policies are relevant to the assessment of this case:

### National Planning Policy Framework

- 4.3. • Part 12 – Achieving well-designed places  
• Part 13 – Green Belt

### 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:

- ACS Policy 3: (The Green Belt)
- ACS Policy 10: (Design and Enhancing Local Identity)

### 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:

- 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 29 (Historic Landscapes, Parks and Gardens) states that development affecting Registered Parks and Gardens should seek to conserve and/or enhance features which form part of the significance of the asset and ensure development does not detract from the enjoyment, layout, design, character and appearance or setting of the Registered Park or Garden including key views.
- 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.

## **5. Background / Investigation**

5.1. In planning terms, the Council has to ascertain whether the structure requires planning permission. The structure has been constructed within the camping tent area of the established club grounds. There is no change of use of the land associated with the works. Therefore, determination must be made as to whether the works are operational development requiring planning permission, and if development, whether there are any permitted development

rights that would allow the construction of such a structure without the need for planning permission.

- 5.2. The Club Member and structures owner considers the development to be nothing more than a temporary 'tent' not requiring planning permission. In this regard, his opinion is that the 'tent' should be treated the same as any other tent pitched up on the site.
- 5.3. The structure has been constructed with the intention of it being a 'tent'. The structure has a canvas roof and has been constructed around a metal frame which is only positioned upon the ground and held down by guide ropes. In this regard the structure does have some similarities to a traditional tent.
- 5.4. However, the structure contains other elements that would not generally be associated with a 'tent'. Of particular note are the timber support post, the solid internal walls, the fitted kitchen units, the double-glazed doors and the integrated boiler heating system. In this regard it is considered that the structure is not simply a temporary tent.
- 5.5. Consequently, the Council has to determine if the structure is considered to be development. Section 55 of the Town and Country Planning Act 1990 defines the meaning of development. In this it states that "development" means the carrying out of building, engineering or other operations in, on, over or under land. To aid in the determination as to whether the structure is operational development an assessment must be made in relation to the structures physical attachment to the ground, its moveability and its degree of permanence.
- 5.6. As discussed earlier the structure is not physically attached to the ground, bar the guide ropes. The structure sits on a metal frame, off which a combination of metal and wooden support structures are attached. The elements, such as the patio doors then sit or are hooked onto that inner support structure to create the finished development.
- 5.7. There is an argument that the structure is not physically attached to the ground. However, it has been constructed in pieces on the site and is not considered to be moveable. This is not a scenario, similar to a caravan or portable building where a completed structure is brought by road onto the site and towed or craned into position. This structure has been fully constructed on site. There are attached glazed doors, walls and a boiler, all of which have been brought onto the site and assembled together to create a new form of development. To move the structure, it would need to be fully dismantled and then reconstructed in any alternative position. The structures owner has indicated that to take it down and rebuild it elsewhere might take a whole weekend. This is a building operation and therefore the Council are of the opinion that it is operational development.
- 5.8. The structure also has a degree of permanency. There has been no attempt to ever remove the structure since it was first constructed on the site. It has been continuously present on the land for the last 3 years. The development therefore remains a constant feature on the site.

- 5.9. Given the above the Council are satisfied that the structure doesn't meet the moveability or degree of permanency test for it to be a temporary structure. The structure is development as defined by Section 55 of the Town and Country Planning Act 1990 and requires planning permission.
- 5.10. As the structure is development the Council then has to assess whether there are any permitted development rights that would allow this Club to construct a building on their land. There are no permitted development rights applicable through the Town & Country Planning (General Permitted Development) Order 2015 that would allow a leisure use to construct any type of building on the land.
- 5.11. Given the above the Council is satisfied that the structure is operational development and therefore planning permission is required. Planning permission has never been sought and the development is therefore a breach of planning control.

## **6. Assessment**

- 6.1. The main considerations when deciding whether to take enforcement action in this case are the impact on the Green Belt setting and the character of the area.
- 6.2. The Government places great importance on the protection of the Green Belt with the fundamental aim of keeping land permanently open. The Nottingham Sun Club is located within the Green Belt; therefore considerable weight should be given to its protection.
- 6.3. Paragraph 147 of the National Planning Policy Framework 2023 (NPPF) states that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 6.4. Paragraph 148 goes on to state that when considering development, 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.
- 6.5. Paragraph 149 of the NPPF provides that the construction of new buildings as inappropriate in the Green Belt but identifies certain exceptions to this. Paragraph 149(b) identifies an exception in terms of the provision of appropriate facilities in connection with the existing use of land for outdoor sports and recreation as long as the facilities preserve openness and do not conflict with the purposes of including land within the Green Belt.
- 6.6. The construction of a new glamping structure introduces built form into an area of the site where there has historically not been any development. Openness is a concept that relates to land that is not built upon. Openness therefore has both a spatial and a visual aspect.

- 6.7. The new structure built has a spatial impact and therefore does not preserve the openness of the Green Belt and conflicts with the purposes of including land within it. The development therefore does not meet the exception in para 149(b) of the NPPF and is inappropriate development, by definition, harmful to the Green Belt.
- 6.8. The construction of the individual glamping structure for use by one individual has no social, economic or environmental benefits that would outweigh the harm to the Green Belt. The very special circumstances required to justify the construction of the glamping structure have therefore not been met.
- 6.9. Although the Club grounds are located adjacent to a historic park and garden, the small-scale development within the camping field is set away from the boundary of the site and therefore does not impact upon the setting, character or appearance of the park and garden. The development will comply with policy LPD29 of the Local Planning Document.
- 6.10. The encroachment into the countryside of the unauthorised structure causes harm to the openness and character of the Green Belt. The development therefore fails to accord with Section 13 of the NPPF.

## **7. Other Considerations**

### Human Rights

- 7.1. 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.
- 7.2. 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

- 7.3. 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.
- 7.4. 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

- 7.5. 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.

### **8. Enforcement Option**

- 8.1. Although the above development has occurred without planning permission a local planning authority is required to consider Government legislation when deciding whether to take planning enforcement action. Paragraph 59 of the National Planning Policy Framework 2023 (NPPF) states that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.
- 8.2. Other than pursuing enforcement action, the only other option is to do nothing. This is not considered an acceptable alternative. This would leave the glamping structure on the land and may lead to other similar structures being constructed by other club members on the site. This would result in further encroachment into the green belt.

### **9. Conclusion**

- 9.1. To date, the breach of planning control remains. Given there is a clear reason to reject the unauthorised development, the commencement of enforcement action is warranted and the appropriate course of action.

- 9.2. In this case the enforcement action to be pursued is the removal of the operational development (the glamping structure) from the land. 1 month to seek compliance is considered reasonable required to remove the structure.
- 9.3. The service of an enforcement notice under section 172 of the Town and Country Planning Act 1990 should now be undertaken. This course of action will restore the land to its condition before the breach took place, as required by section 173(4)(a) of The Act. The action will also uphold the appropriate planning control of the land.

## **10. Recommendation**

- 10.1. **That the Head of Development and Place, in conjunction 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 ensure the removal of the unauthorised structure from the land.**